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REPORTS

FROM

COMMITTEES:

TEN VOLUMES.

—*(3.)*—

COCHRANE'S, LORD, PETITION; COMMONS;
CONSERVANCY BOARDS [H. L.];
COUNTY OFFICERS AND COURTS (IRELAND) BILL;
ECCLESIASTICAL OFFICES AND FEES BILL;
EMPLOYERS' LIABILITY FOR INJURIES TO THEIR SERVANTS.

Session

8 *February* —— 14 *August* 1877.

VOL. X.

1877.

REPORTS FROM COMMITTEES:

1877.

TEN VOLUMES:—CONTENTS OF THE

THIRD VOLUME.

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REPORT

FROM THE

SELECT COMMITTEE

ON

LORD COCHRANE'S PETITION;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

AND

MINUTES OF EVIDENCE.

Ordered, by The House of Commons, *to be Printed*,
16 *July* 1877.

Tuesday, 10*th April* 1877.

Ordered, THAT a Select Committee be appointed to inquire and report upon the Petition of Lord Cochrane to Her Majesty, praying Her to be graciously pleased to complete the gracious act of Royal justice which restored the late Lord Dundonald to his rank and honours, a copy of which was presented to the House upon the 8th day of March last, pursuant to an Address to Her Majesty.

Monday, 14*th May* 1877.

Select Committee nominated of—

Mr. Solicitor General.
Mr. Walpole.
Admiral Egerton.
Mr. Whitbread.
Mr. Russell Gurney.
Mr. William Holms.
Mr. Allsopp.
Mr. Butt.
Mr. Alfred Marten.
Mr. Baxter.
Mr. Sackville.
Mr. Greene.
Mr. O'Byrne.
Mr. Tremayne.
Sir Robert Anstruther.

Ordered, THAT the Committee have power to send for Persons, Papers, and Records.

Ordered, THAT Five be the Quorum of the Committee.

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REPORT

THE SELECT COMMITTEE appointed to inquire and report upon the PETITION of Lord *Cochrane* to Her Majesty, praying Her to be graciously pleased to complete the gracious act of Royal Justice which restored the late Lord *Dundonald* to his rank and honours, a Copy of which was presented to the House upon the 8th day of March last, pursuant to an Address to Her Majesty;——HAVE considered the matters to them referred, and have agreed to the following REPORT:

1. YOUR COMMITTEE beg to report that they have carefully examined the Petition presented by Lord Cochrane to Her Majesty, which has been laid upon the table of the House, and referred by the House to your Committee.

2. Your Committee have received from the Treasury, Home Office, and Admiralty, all the documents in their possession relative to the case of the late Lord Dundonald, and they have been supplied by Lord Cochrane with other papers bearing upon the subject, all of which they have examined.

3. In considering the petition, your Committee have not deemed it necessary to touch upon those portions of it which refer to the trial of the late Lord Dundonald (then Lord Cochrane), but they have confined their inquiry to the circumstances that have occurred since that trial took place, and the material facts appear to be as follows:— *Vide* Question 4.

4. In 1814 Lord Cochrane was struck off the Navy List in consequence of his conviction before a court of law of conspiring with others to raise false reports for the purpose of fraudulently effecting a rise in the price of the public funds.

He was deprived of the Order of the Bath, and his banner was removed from King Henry VII.'s Chapel.

5. Lord Cochrane invariably asserted in the most positive terms his absolute and entire innocence of the charges brought against him.

6. Immediately upon his return from foreign service in Brazil in 1825, he made a claim for the re-investigation of his case, and to be reinstated in the Royal Navy, in a letter addressed to Lord Melville, then First Lord of the Admiralty, neither the original nor any copy of which appears to exist. Lord Melville's reply is dated the 4th of November 1825, and after stating that no naval court could now legally take cognizance of the matter, continues, "I do not deem "myself at liberty to recommend to His Majesty to institute the inquiry which "you suggest. I am not aware of any tribunal in this country which is com- "petent to such an investigation, and your Lordship must know that even if "the charge could originally have been brought before a naval court-martial "(which it could not, as the alleged offence was committed on shore), no such "court could now legally take cognisance of the matter, and any opinion or "sentence they might pronounce upon it would be null and void. I apprehend "that nothing but a free pardon from the Crown can now do away the effect "of the verdict and sentence in your Lordship's case; but unless the Secretary "of State and the law officers of the Crown were satisfied that such verdict "and sentence were unjust and ought not to have been pronounced, His "Majesty would not be advised to grant a free pardon." Lord Melville's answer, 1825, and his opinion on the application. *Vide* Questions 194 and 195.

Vide Question 4.

7. In 1828, Lord Cochrane having returned from foreign service under the Greek Government, presented a memorial through Sir Robert Preston to the Duke of Clarence, then Lord High Admiral of England, "praying his Royal "Highness to represent his case to the King, in order that he might be rein- "stated in the rank and station in the Royal Navy which he had previously "held." The memorial was forwarded to the Duke of Wellington, who, on the 14th June 1828, replied that "the King's Cabinet cannot comply with the prayer "of the Memorial."

Vide Questions 5 and 79.

Vide Questions 8 to 9, and 82-89, and a letter of Lord Grey's on this subject, Answer 92.

8. The next application made by Lord Dundonald was a memorial sent by him in 1830 to King William IV. through Lord Melbourne, then Secretary of State for the Home Department, accompanied by two copies of a book, entitled, "Review of the Case of Lord Cochrane."

Lord Melbourne informed the petitioner on the 18th December 1830, that "His Majesty had returned the letter to him, but has not been pleased to "signify any commands."

Vide Answer No. 12.

9. On the 2nd April 1832, another memorial was sent to the Crown by the late Lord Dundonald, praying for his restoration to the Royal Navy, and in that memorial it is stated that His Majesty has been pleased, in compliance with the prayer of the humble petition of Katherine Countess of Dundonald, "to relieve the memorialist and his family from great mental anguish and "distress, and from the afflicting consequences of the sentence of a court of "law." On the 12th April 1832, this memorial was, by order of His Majesty in Council, referred to the Lords Commissioners of the Admiralty, who reported under date April 23rd, 1832.

Vide No. 23 and 24.

Your Committee are unable to discover any further notice of Lady Dundonald's petition, but they find that on the 24th March 1832, a free pardon was granted to Lord Dundonald by the King, and in order to give full effect to this act of grace, it was recommended by the Admiralty, and His Majesty in Council was pleased to order (on the 2nd May 1832) "that the Earl of Dundonald "should resume his place on the list of Rear Admirals of His Majesty's Fleet, "which situation he would have been entitled to hold if he had not been re- "moved from the list, and that the said Earl of Dundonald be and he is hereby "reinstated in his rank and station accordingly, and that his half-pay do com- "mence from the date of this order."

Order in Council May 2nd, 1832.

Vide Answers 7, 94, and 95.

10. It is next stated that in 1842 Lord Dundonald applied through Lord Haddington for the restoration of the Order of the Bath, which was refused; although none of the documents relating to this application are forthcoming, there appears no reason to doubt that the statement is correct.

Vide Question 99.

11. In 1844 another memorial was presented by Lord Dundonald to Sir Robert Peel, praying for a revisal of the verdict pronounced against him in 1814, and for his restoration to the Order of the Bath. In this memorial he states, in reference to King William IV., "I have been assured by the then Chan- "cellor, that His Majesty distinctly intimated that his objection (to restoring my "honours) was not prospective, and that he expected the time would arrive "when I should be fully reinstated." The Chancellor here referred to was the late Lord Brougham, and the assurance given was contained in a letter from Lord Brougham to Lord Dundonald, bearing date 29th March 1844.

Vide Question 108.

Vide 103.

Sir Robert Peel's reply to the memorial is dated 7th November 1844, and states "that Her Majesty's servants cannot, consistently with their sense of "public duty, advise the Queen to re-open an inquiry into the charges."

Vide Question 36.

12. On the 25th May 1847, Lord Dundonald was restored to the Order of the Bath with the rank of Knight Grand Cross, which corresponded, in the reconstituted Order, with the rank of Knight of the Bath. It was stated by Lord Cochrane that the late Prince Consort, Grand Master of the Order, dispensed with the customary formalities in order that Lord Dundonald might wear the Cross at the Birthday Drawing-room before his installation took place.

13. On the 11th January 1848, Lord Dundonald was appointed to the Command in Chief of the North America and West India Station.

Vide Questions 50 and 51.

14. Lord Dundonald having now been reinstated in the Royal Navy, and restored to his honours, applied for his half-pay from 1814 to 1832, which, he submitted, was in justice due. The memorial containing this application was forwarded

forwarded by the Treasury to the Admiralty, and, in reply, the Admiralty state, "They know of no precedent in the Naval Service for any similar "restoration of half-pay. Sir Robert Wilson claimed and obtained the arrears *Vide* 51. "of his half-pay when restored to his former position in the Army, upon the "ground of signal services hitherto unrewarded; if a similar plea can be ad- "mitted in the present instance, my Lords can entertain little doubt of the "result of the present application, no man now alive having done more, and "few as much as Lord Dundonald, to illustrate the Service to which he *Vide* 51. "belongs."

The reply of the Treasury is dated 3rd February 1848, and is as follows: "Sir, with reference to your letter, dated the 24th ultimo, respecting the appli- "cation from the Earl of Dundonald to receive the arrear of half-pay which was "withheld for the period during which his name did not appear upon the Navy "List, I am commanded by the Lords Commissioners of Her Majesty's Treasury "to request that you will apprize the Lords Commissioners of the Admiralty "that they are mistaken in supposing that in the case of Lieutenant General "Sir Robert Wilson, to which they have referred, that officer obtained the "arrears of half-pay for any period previous to the date of his restoration to "the service. It appears from your communication above referred to, that "Lord Dundonald has already received half-pay from the date of his restoration "to his rank, and my Lords do not feel themselves justified in sanctioning the "issue of half-pay to his Lordship for a period antecedent to that date."

15. The only other application which was made by the late Lord Dundonald *Vide* 37 and 47. was to Lord Palmerston, 26th May 1856, praying that his banner might be restored to Henry VII.'s Chapel, that the fine of 1,000 *l.* inflicted upon him by the Court of Queen's Bench might be refunded, and that his half-pay during the time he was out of the service might be paid him. This application was refused. *Vide* Question 47.

16. Lord Dundonald died in 1860, and after his death his banner as Knight of the Bath was restored to its place in Henry VII.'s Chapel. *Vide* Answers 72–74.

In 1864 his successor in the title applied for the reimbursement of the fine, and the payment of the half-pay, and for a pension; this application was refused on the 30th of July 1864, in a letter as follows: "I am commanded by Question 57. "my Lords Commissioners of the Admiralty to acquaint you, for the informa- "tion of the Secretary of State for Home Affairs, that my Lords are of opinion "there is not any new ground for reopening the case as to the late Lord Dun- "donald's pay; that when King William the Fourth restored his Lordship to "his rank in the Navy, in the year 1832, he did not recommend these arrears "to be paid; and further, that an application for the payment of the same was "made in the year 1848, and refused by the Lords of the Treasury."

17. In his last application to the Treasury, Lord Dundonald relied upon the precedent of Sir Robert Wilson's case; your Committee have taken evidence upon the subject and find that Sir R. Wilson was dismissed the Service in 1821; was reinstated in 1830; his commission as Lieutenant General to bear date of 27th May 1825, he being ordered to take rank next after Lieutenant General Sir Herbert Taylor, to whom he was next junior when he was dismissed the service. At that time no back pay was applied for by, or awarded to, Sir Robert Wilson for any part of the time during which he was out of the service. But in 1832 he applied for the restoration of his half-pay as from 27th May 1825, which was the date of his commission. This application was at first objected to by the Chancellor of the Exchequer, but was subsequently granted upon a recommendation of Sir John Cam Hobhouse, then Secretary at *Vide* 162. War, to the Treasury, in a letter dated 8th October 1832, in which he states, "I think myself justified in recommending this as a special case for their "Lordships' consideration, and I hope I may be excused for adding that, in my "opinion, the Act of Royal favour which restored Sir Robert Wilson to the "rank that he could have held, had he never been dismissed the service, may "fairly be interpreted to extend to pay as well as rank."

18. Your Committee have also received in evidence the particulars of the *Q.* 178. case of a Major Bristowe, which they report as follows: It appeared that Major Bristowe was removed from the Army in July 1823, upon a charge of having infringed the provisions of the Foreign Enlistment Act, and the sum of 1,800 *l.*, the price of a commission, was granted to him by the Treasury in 1826 as a

compassionate allowance. He was restored to the Service in September 1830, and applied that, in reckoning the sum to be returned by him in respect of 1,800 *l.*, he might be allowed credit for the amount of his half-pay, as from the date of his dismissal in 1823. Sir John Cam Hobhouse, then Secretary at War, strongly recommended "his case upon the ground that he considered the "restoration was an act of justice, rather than of clemency, inasmuch as the "officer did not do that for which it had been assumed he had been dismissed "the service."

Major Bristowe's application was granted by the Treasury.

19. Your Committee think it right to report that during the time of his exclusion from the Royal Navy, the late Lord Dundonald took service with Foreign Countries as follows:

Foreign Service. *Vide* 109.

In Chili and Peru, from November 1818 to January 1823.
In Brazil, from April 1823 to November 1825.
In Greece, from March 1827 to December 1828.

20. In connection with his services in foreign countries, your Committee think it right to direct attention to an incident in the life of Lord Dundonald.

Question, 113, 114. In the year 1811, Lord Dundonald, then Lord Cochrane, submitted to the Prince Regent an invention of his own, by which he believed that powers of a nature so destructive as to be practically irresistible could be employed in war.

The plan of this invention was referred to the consideration of a Secret Committee, consisting of His Royal Highness the Duke of York, Admirals Lord Keith and Exmouth, and the two Congreves, inventors of the rockets which bear their name.

In consequence of the Report of this Committee, the invention, whatever may have been its nature, was not used. The papers in which Lord Cochrane explained it were sealed up, and deposited in the Admiralty, where they still remain.

It was stated by Lord Dundonald in a letter to Lord Haddington, dated January 1842, and in a memorial to the Queen, dated 1846, that after the Secret Committee had made their Report, the Prince Regent sent for Lord Cochrane, and enjoined him never to divulge the secret of his invention to any one except the authorities of this country.

During his services with other countries Lord Dundonald was repeatedly pressed to use this invention in the operations of warfare of which he had the chief command. Resisting, however, all the pressure that was brought to bear upon him, and many temptations of personal advantage to himself, he steadily refused to disclose the nature of his invention, or to use it in any of the operations where he directed. Up to the last hour of his life the secret remained undivulged except in the sealed papers lying in the Admiralty.

The Secret Committee of Officers who again in 1847 investigated the plans, stated in their Report as follows,—

Question 12.

> "We feel that great credit is due to Lord Dundonald for the right feeling which prompted him not to disclose his secret plans when serving in war as a naval commander in chief of the forces of other nations, and under many trying circumstances, in the conviction that these plans might eventually be of the highest importance to his own country."

Vide No. 68.

21. Lord Dundonald, by his will, left all the money due to him from the British Government for his important services, as also the amount of his pay withheld during his exclusion from the British Navy, to the Petitioner. Lord Cochrane did not attain the age of 21 till the autumn of 1873, and early in 1876 he presented the Memorial to Her Majesty which has been referred to this Committee. On the 3rd of June 1876, Lord Cochrane received an answer from the Treasury to his Memorial, of which the following is an extract: "My Lords "fully share in the admiration with which all Englishmen regard the brilliant "services of the late Earl of Dundonald; and if they could believe that any "further acknowledgment of his merits was required, or that any fresh public "expression of regret for all his lengthened sufferings was needed to complete "the reparation already made to him, it would be a great satisfaction to them "to recommend the adoption of any course which they might deem to be suitable "for the purpose. My Lords can come to no other conclusion than that the "recognition which you now seek has been long since accorded; and that the "question raised in your memorial narrows itself to one of precedent and of the rules

"rules of the public service. My Lords find that the question of allowing back "pay to Lord Dundonald for the period during which he was out of the service "was fully considered in 1848 by the Government of the day, and was decided "in the negative, with special reference to the precedent in Sir Robert Wilson's "case; and my Lords, therefore, regret to find themselves unable to recommend "a compliance with your memorial."

22. Your Committee have arrived at the conclusion that the objects described in this letter can scarcely be said to be carried out, while the claim which Lord Dundonald has bequeathed to his grandson is not recognised. All the proceedings connected with his restoration to the naval service, and to his rank and honours, proceeded upon the principle that, as far as possible, he should be placed in the same position as if he had never been removed from the service. This appears of necessity to imply that the "reparation" spoken of in the Treasury Minute is not complete; and, in the opinion of your Committee, no technical rule should be permitted to stand in the way of a "reparation," the justice of which seems to follow by a natural inference from the steps that have already been taken.

23. In reviewing the whole case, your Committee have to observe that, under one Government, in 1832, Lord Dundonald received the free pardon of the Crown, and was promoted to that place in the Navy which he would have held had he never been dismissed the service. Under a subsequent Government, in 1847, he was restored to the honours which had been conferred on him previous to his expulsion. Under a third Government, in 1860, Lord Dundonald's banner as Knight of the Bath was restored to Henry VII.'s Chapel.

It appears to your Committee that these steps could not have been taken by responsible advisers of the Crown who believed that Lord Dundonald was guilty of the crime of which, in 1814, he was convicted; and the course pursued towards him amounts to nothing less than a public recognition by those Governments of his innocence.

It should further be borne in mind, that the exceptionally brilliant services of Lord Dundonald as a naval officer, would, but for his dismissal, probably have earned for him a far more ample and adequate reward than any which he received for his services rendered to the British Crown.

Your Committee have arrived at the conclusion that this is a case peculiarly exceptional in its character, and deserving Her Majesty's most gracious and favourable consideration.

16 *July* 1877.

PROCEEDINGS OF THE COMMITTEE.

Thursday, 17*th May* 1877.

MEMBERS PRESENT:

Mr. Walpole.	Mr. Tremayne.
Sir Robert Anstruther.	Mr. Butt.
Admiral Egerton.	Mr. William Holms.
Mr. Solicitor General.	Mr. O'Byrne.

Sir ROBERT ANSTRUTHER was called to the Chair.

The Committee deliberated.

[Adjourned till Friday, the 8th of June.

Friday, 8*th June* 1877.

MEMBERS PRESENT:

Sir ROBERT ANSTRUTHER in the Chair.

Mr. Butt.	Mr. Walpole.
Admiral Egerton.	Mr. Tremayne.
Mr. William Holms.	Mr. Whitbread.
Mr. O'Byrne.	Mr. Russell Gurney.
Mr. Sackville.	Mr. Greene.
Mr. Solicitor General.	

The Committee deliberated.

Petition of Lord Cochrane to Her Majesty read.

The various documents received from the Treasury, Home Office, and Admiralty, relating to the claims of the late Earl of Dundonald in the years 1832, 1848, 1864, and 1876, were laid before the Committee by the Clerk.

Lord *Cochrane* was examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 12*th June* 1877.

MEMBERS PRESENT:

Sir ROBERT ANSTRUTHER in the Chair.

Mr. Solicitor General.	Mr. Baxter.
Mr. Russell Gurney.	Mr. Butt.
Mr. Whitbread.	Mr. Alfred Marten.
Mr. Sackville.	Mr. William Holms.
Mr. Greene.	Mr. O'Byrne.
Mr. Walpole.	

The Committee deliberated.

Lord *Cochrane* was further examined.

Mr. *Thomas B. Branwell* was examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 19*th June* 1877.

MEMBERS PRESENT:

Sir ROBERT ANSTRUTHER in the Chair.

Mr. Russell Gurney.	Mr. Baxter.
Mr. Sackville.	Admiral Egerton.
Mr. Greene.	Mr. William Holms.
Mr. Tremayne.	Mr. Alfred Marten.
Mr. Allsopp,	Mr. Whitbread.
Mr. Walpole.	Mr. Solicitor General.

Mr. *Thomas B. Branwell* and Lord *Cochrane* were further examined.

Adjourned till Tuesday, 3rd July, at Two o'clock.

Tuesday, 3*rd July* 1877.

MEMBERS PRESENT:

Sir ROBERT ANSTRUTHER in the Chair.

Mr. O'Byrne.	Mr. Whitbread.
Mr. Alfred Marten.	Mr. Sackville.
Mr. William Holms.	Mr. Tremayne.
Admiral Egerton.	Mr. Allsopp.
Mr. Baxter.	Mr. Greene.
Mr. Walpole.	Mr. Butt.
Mr. Russell Gurney.	Mr. Solicitor General.

The Committee deliberated.

[Adjourned till Tuesday next, at Three o'clock.

Tuesday, 10*th July* 1877.

MEMBERS PRESENT:

Sir ROBERT ANSTRUTHER in the Chair.

Mr. Solicitor General.	Mr. William Holms.
Mr. Russell Gurney.	Mr. Baxter.
Mr. Whitbread.	Admiral Egerton.
Mr. Alfred Marten.	Mr. Sackville.
Mr. Allsopp.	Mr. Walpole.
Mr. Tremayne.	Mr. Butt.
Mr. O'Byrne.	

DRAFT REPORT proposed by the Chairman, read the first time, as follows:—

"1. Your Committee beg to report that they have carefully examined the Petition presented by Lord Cochrane to Her Majosty, which has been laid upon the table of the House, and referred by the House to your Committee.

"2. Your Committee have received from the Treasury, Home Office, and Admiralty, all the documents in their possession relative to the case of the late Lord Dundonald, and they have been supplied by Lord Cochrane with other papers bearing upon the subject, all of which they have examined.

" 3. In considering the petition, your Committee have not deemed it necessary to touch upon those portions of it which refer to the trial of the late Lord Dundonald (then Lord Cochrane), but they have confined their inquiry to the circumstances that have occurred since that trial took place, and the material facts appear to be as follows :—

Vide Question 4.

" 4. In 1814 Lord Cochrane was struck off the Navy List in consequence of his conviction before a court of law of conspiring with others to raise false reports for the purpose of fraudulently effecting a rise in the price of the public funds.

" He was deprived of the Order of the Bath, and his banner was removed from King Henry VII.'s Chapel.

" 5. Lord Cochrane invariably asserted in the most positive terms his absolute and entire innocence of the charges brought against him.

" 6. Immediately upon his return from foreign service in Brazil, he made a claim for the reinvestigation of his case, and to be reinstated in the Royal Navy. This claim appears to have been made in 1825 in a letter addressed to Lord Melville, then First Lord of the Admiralty, neither the original or any copy of which appears to exist. Lord Melville's reply is dated the 4th of November 1825, and after stating that no naval court could now legally take cognisance of the matter, continues, 'I do not deem myself at liberty to 'recommend to His Majesty to institute the inquiry which you suggest. I am not aware 'of any tribunal in this country which is competent to such an investigation, and your 'Lordship must know that even if the charge could originally have been brought before 'a naval court-martial (which it could not, as the alleged offence was committed on shore), 'no such court could now legally take cognisance of the matter, and any opinion or sen-'tence they might pronounce upon it would be null and void. I apprehend that nothing 'but a free pardon from the Crown can now do away the effect of the verdict and sen-'tence in your Lordship's case; but unless the Secretary of State and the law officers of 'the Crown were satisfied that such verdict and sentence were unjust and ought not to 'have been pronounced, His Majesty would not be advised to grant a free pardon.'

Application, Lord Melville, 1825.

Vide Questions 194 and 195.

" 7. In 1828, Lord Cochrane having returned from foreign service under the Greek Government, presented a memorial through Sir Robert Preston to the Duke of Clarence, the Lord High Admiral of England, 'praying his Royal Highness to represent his case 'to the King, in order that he might be reinstated in the rank and station in the Royal 'Navy which he had previously held,' The memorial was forwarded to the Duke of Wellington, who, on the 14th June 1828, replied that 'the King's Cabinet cannot comply 'with the prayer of the Memorial.'

Vide Question 4.

Vide Questions 5 and 79.

" 8. The next application made by Lord Dundonald was a memorial sent by him in 1830 to King William IV. through Lord Melbourne, then Secretary of State for the Home Department, accompanied by two books, entitled 'Review of the Case of Lord 'Cochrane.'

" Lord Melbourne informed the petitioner on the 18th December 1830, that 'His 'Majesty had returned the letter to him, but has not been pleased to signify any commands.'

Vide Questions 7 to 9, and 82–89, and a letter of Lord Grey's on this subject, Answer 92.

" 9. On the 2nd April 1832, another memorial was sent to the Crown by the late Lord Dundonald, praying for his restoration to the Royal Navy, and in that memorial it is stated that His Majesty has been pleased, in compliance with the prayer of the humble petition of Katherine Countess of Dundonald, 'to relieve the memorialist and his family 'from great mental anguish and distress, and from the afflicting consequences of the 'sentence of a court of law,' &c. &c.

Vide Answer No. 12.

" Your Committee are unable to discover any further notice of Lady Dundonald's petition, but they find that on the 24th March 1832, a free pardon was granted to Lord Dundonald by the king, and in order to give full effect to this act of grace, it was recommended by the Admiralty, and his Majesty in Council was pleased to order (on the 2nd May 1832) 'that the Earl of Dundonald should resume his place on the list of Rear 'Admirals of His Majesty's Fleet, which situation he would have been entitled to hold if 'he had not been removed from the list, and that the said Earl of Dundonald be and he 'is hereby reinstated in his rank and station accordingly, and that his half pay do com-'mence from the date of this order.'

Vide Nos. 23 and 24.

Order in Council, 2nd May 1832.

" 10. It is next stated that in 1842 Lord Dundonald applied through Lord Haddington for the restoration of the Order of the Bath, which was refused. None of the documents relating to this application are forthcoming; there appears no reason to doubt that the statement is correct.

Vide Answers 26, 27, and 94.

" 11. In 1844 another memorial was presented by Lord Dundonald to Sir Robert Peel, praying for a revisal of the verdict pronounced against him in 1814, and for his restoration to the order of the Bath. In this memorial he states, 'I have been assured by the Chan-'cellor that His Majesty distinctly intimated that his objection (to restoring my honours) 'was not prospective, and that he expected the time would arrive when I should be fully 'reinstated.' The Chancellor here referred to was the late Lord Brougham, and the assurance given was contained in a letter from Lord Brougham to Lord Dundonald, bearing date 29th March 1844.

Vide Question 108.

Vide 103.

Sir Robert Peel's reply to the memorial is dated 7th November 1844, and states, 'that 'Her

'Her Majesty's servants cannot, consistently with their sense of public duty, advise the 'Queen to re-open an inquiry into the charges.'

"12. On the 25th May 1847, Lord Dundonald was restored to the Order of the Bath with the rank of Knight Grand Cross, which corresponded since the reconstitution of the Order, to the rank of Knight of the Bath. It was stated by Lord Cochrane that the late Prince Consort, Grand Master of the Order, dispensed with the customary formalities in order that Lord Dundonald might wear the Cross at the Birthday Drawing-room before his installation took place. *Vide* Question 36.

"13. Lord Dundonald having now been reinstated in the Royal Navy, and restored to his honours, applied for his half-pay from 1814 to 1832, which, he submitted, was in justice due. The memorial containing this application was forwarded by the Treasury to the Admiralty, and, in reply, the Admiralty state, 'They know of no precedent in the 'Naval Service for any similar restoration of half-pay. Sir Robert Wilson claimed and 'obtained the arrears of his half-pay when restored to his former position in the Army, 'upon the ground of signal services hitherto unrewarded; if a similar plea can be 'admitted in the present instance, my Lords can entertain little doubt of the result of 'the present application, no man now alive having done more, and few as much, as Lord 'Dundonald, to illustrate the Service to which he belongs.' *Vide* Question 51. *Vide* Question 47. *Vide* 51.

"The reply of the Treasury is dated 3rd February 1848: 'It appears that Lord 'Dundonald has already received half-pay from the date of restoration to his rank, and 'my Lords do not feel themselves justified in issuing half-pay to his Lordship for a 'period antecedent to that date.' *Vide* 51.

"14. The only other application which was made by the late Lord Dundonald was to Lord Palmerston, 26th May 1856, praying that his banner might be restored to Henry VII.'s Chapel, that the fine inflicted upon him by the Court of Queen's Bench might be refunded, and that his half-pay during the time he was out of the service might be paid him. This application was refused. *Vide* 37 and 48. *Vide* Question 47.

"15. Lord Dundonald died in 1860, and after his death his banner as Knight of the Bath was restored to its place in Henry VII.'s Chapel. *Vide* Answers 72–74.

"16. In his last application to the Treasury, Lord Dundonald relied upon the precedent of Sir Robert Wilson's case; your Committee have taken evidence upon the subject, and find that Sir R. Wilson was dismissed the Service in 1821; was reinstated in 1830; his commission as Lieutenant General to bear date of 27th May 1825, he being ordered to take rank next after Lieutenant General Sir Herbert Taylor, to whom he was next junior when he was dismissed the service.

"Sir R. Wilson applied in 1832 for the restoration of his half-pay as from 27th May 1825. This application was at first refused, but was subsequently granted upon a recommendation of Sir John Cam Hobhouse, then Secretary of War, to the Treasury, in a letter dated 8th October 1832, in which he states, 'I think myself justified in recom-'mending this as a special case for their Lordships' consideration, and I hope I may be 'excused for adding that, in my opinion, the Act of Royal favour which restored Sir 'Robert Wilson to the rank that he could have held, had he never been dismissed the 'service, may fairly be interpreted to extend to pay as well as rank.' *Vide* 162.

"17. Your Committee have also received in evidence the particulars of the case of a Major Bristowe, which, as they appear to have some bearing upon the present application, they report as follows: It appeared that Major Bristowe was removed from the Army in July 1823, upon a charge of having infringed the provisions of the Foreign Enlistment Act, and the sum of 1,800*l.*, the price of a commission, was granted to him by the Treasury in 1826, as a compassionate allowance. He was restored to the Service in September 1830, and applied for the restoration of his half-pay from 1823, as from the date of his dismissal. Sis John Cam Hobhouse, then Secretary of State for War, strongly recommended 'his case upon the ground that he considered the restoration was 'an act of justice, rather than of clemency, inasmuch as the officer did not do that for 'which it had been assumed he had been dismissed the service.' Q. 178.

"Major Bristowe's application was granted by the Treasury, he being called upon, however, to refund the sum of 1,800*l.* which had been granted him.

"18. Your Committee beg to point out that this case is important as bearing upon a paragraph in a letter from the Treasury to Lord Cochrane, dated the 3rd June 1876, in which the following remark occurs: 'Your Memorial narrows itself to one of precedent and of the rules of the public service.' *Vide* Answer, No. 68.

"19. Your Committee think it right to report that during the time of his exclusion from the Royal Navy, the late Lord Dundonald took service with foreign countries, as follows:

"In Chili and Peru, from November 1818 to January 1823.

"In Brazil, from April 1823 to November 1825.

"In Greece, from March 1827 to December 1828. Foreign service. *Vide* 109.

"20. Lord Dundonald, by his will, left all the money due to him from the British Government for his important services, as also the amount of his pay withheld during his exclusion from the British Navy, to the Petitioner. Lord Cochrane did not attain the age of *Vide* No. 68.

21 till the autumn of 1873, and early in 1876 he presented the Memorial to Her Majesty which has been referred to this Committee. On the 3rd of June 1876, Lord Cochrane received an answer from the Treasury to his Memorial, of which the following is an extract: 'My Lords fully share in the admiration with which all Englishmen regard the 'brilliant services of the late Earl of Dundonald; and if they could believe that any 'further acknowledgment of his merits was required, or that any fresh public expression 'of regret for all his lengthened sufferings was needed to complete the reparation already 'made to him, it would be a great satisfaction to them to recommend the adoption of any 'course which they might deem to be suitable for the purpose.'

"21. In reviewing the whole case, your Committee, having regard to the exceptionally brilliant services of Lord Dundonald as a naval officer, which, but for his dismissal, would probably have earned for him a far more ample and adequate reward than any which he received during his service; seeing that he invariably declined to disclose to Foreign Governments his secrets of warfare, which he considered might be used to the detriment of his own country; that he received no pecuniary compensation from the British Government for the many gallant services he rendered to the Crown; and having regard to the noteworthy fact that a free pardon was granted to him by his Sovereign, and that he was 'promoted to that place in the Navy which he would have held had he never been dis-'missed the service,' and restored to those honours which he enjoyed at the time of his dismissal, have arrived at the conclusion that this is a case peculiarly exceptional in its character, and they think it deserves Her Majesty's most gracious and favourable consideration.

DRAFT REPORT proposed by the Chairman, read a second time, paragraph by paragraph.

Paragraphs 1—5, *agreed to.*

Paragraph 6, amended and *agreed to.*

Paragraph 7, *agreed to.*

Paragraphs 8—14, amended and *agreed to.*

Paragraph 15, *agreed to.*

A new paragraph inserted.

Paragraphs 16—17, amended and *agreed to.*

Paragraph 18, *disagreed to.*

Paragraph 19, *agreed to.*

Another new paragraph inserted.

Paragraph 20, *agreed to.*

[Adjourned till Saturday next, at Twelve o'clock.

Saturday, 14th July 1877.

MEMBERS PRESENT:

Sir ROBERT ANSTRUTHER in the Chair.

Mr. O'Byrne.	Mr. Russell Gurney.
Mr. William Holms.	Mr. Whitbread.
Admiral Egerton.	Mr. Alfred Marten.
Mr. Butt.	Mr. Tremayne.
Mr. Baxter.	Mr. Alsopp.
Mr. Walpole.	Mr. Sackville.
Mr. Solicitor General.	

Draft Report further considered.

Amendment proposed, That the following new paragraph be inserted in the proposed Report:—"Your Committee has arrived at the conclusion that the objects described in this letter can scarcely be said to be carried out, while the claim which Lord Dundonald has bequeathed to his grandson is not recognised. All the proceedings connected with his restoration to the naval service, and to his rank and honours, proceeded upon the principle

principle that, as far as possible, he should be placed in the same position as if he had never been removed from the service. This appears of necessity to imply that the 'reparation' spoken of in the Treasury Minute is not complete, and, in the opinion of your Committee, no technical rule should be permitted to stand in the way of a 'reparation,' the justice of which seems to follow by a natural inference from the steps that have already been taken"—(Mr. *Butt*).—Question put, "That this paragraph be inserted in the proposed Report."—The Committee divided:

Ayes, 7.	Noes, 6.
Mr. Walpole.	Mr. Solicitor General.
Admiral Egerton.	Mr. Russell Gurney.
Mr. Whitbread.	Mr. Allsopp.
Mr. William Holms.	Mr. Alfred Marten.
Mr. Butt.	Mr. Sackville.
Mr. Baxter.	Mr. Tremayne.
Mr. O'Byrne.	

Paragraph 21, Amendment proposed, To leave from the words "your Committee," to the end of the paragraph, in order to add the words, "have to observe that, under one Government, in 1832, Lord Dundonald received the free pardon of the Crown, and was promoted to that place in the Navy which he would have held had he never been dismissed the service. Under a subsequent Government, in 1847, he was restored to the honours which had been conferred on him previous to his expulsion. Under a third Government, in 1860, Lord Dundonald's banner, as Knight of the Bath, was restored to Henry VII.'s Chapel. It appears to your Committee that these steps could not have been taken by responsible advisers of the Crown who believed that Lord Dundonald was guilty of the crime of which, in 1814, he was convicted; and the course pursued towards him amounts to nothing less than a public recognition by those Governments of his innocence"—(Mr. *Whitbread*),—instead thereof.

Question, That the words, "Having regard to the exceptionally brilliant services of," stand part of the paragraph,—put and *negatived.*

Question put, That the proposed words be added instead thereof.—The Committee divided:

Ayes, 7.	Noes, 6.
Mr. Walpole.	Mr. Solicitor General.
Admiral Egerton.	Mr. Russell Gurney.
Mr. Whitbread.	Mr. Allsopp.
Mr. William Holms.	Mr. Alfred Marten.
Mr. Butt.	Mr. Sackville.
Mr. Baxter.	Mr. Tremayne.
Mr. O'Byrne.	

Further amendment made.—Paragraph as amended, *agreed to.*

Another new paragraph inserted.

Question put, That this Report, as amended, be the Report of the Committee to the House.—The Committee divided:

Ayes, 8.	Noes, 5.
Mr. Walpole.	Mr. Solicitor General.
Admiral Egerton.	Mr. Russell Gurney.
Mr. Whitbread.	Mr. Allsopp.
Mr. William Holms.	Mr. Alfred Marten.
Mr. Butt.	Mr. Tremayne.
Mr. Baxter.	
Mr. Sackville.	
Mr. O'Byrne.	

Ordered, To Report, together with the Minutes of Evidence.

LIST OF WITNESSES.

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MINUTES OF EVIDENCE.

Friday, 8th June 1877.

MEMBERS PRESENT:

Sir Robert Anstruther.	Mr. O'Byrne.
Mr. Butt.	Mr. Sackville.
Admiral Egerton.	Mr. Solicitor General.
Mr. Greene.	Mr. Tremayne.
Mr. Russell Gurney.	Mr. Walpole.
Mr. William Holms.	Mr. Whitbread.

SIR ROBERT ANSTRUTHER, BART., IN THE CHAIR.

The Hon. DOUGLAS MACKINNON BAILLIE HAMILTON, LORD COCHRANE, called in; and Examined.

Hon. Lord *Cochrane.*

8 June 1877.

Chairman.

1. As a matter of form, I will ask you whether the petition that I have got here is the one presented to the Queen by you?—Yes.

2. And, as a matter of fact, the name of your grandfather was struck off the list of Captains in the Royal Navy in 1814?—Yes.

3. Will you be kind enough to state to the Committee the steps taken by your grandfather in 1828, and subsequently, to have his rank in the Navy restored to him, commencing as nearly as you can from the first application, and going on in chronological order?—The first application that he made was on the 4th June 1828, to the Duke of Clarence. Here is a copy of the memorial which he presented to the Duke of Clarence (*handing it in*).

Memorial to Duke of Clarence, 4 June 1828.

4. The Paper you have handed us is as follows:

"Copy of a memorial of Lord Cochrane's to the Duke of Clarence, dated 4th June 1828, presented by Sir Robert Preston to His Royal Highness the Lord High Admiral. The memorial of Lord Cochrane humbly sheweth: That for 14 years your memorialist has suffered, among many injuries and privations, the loss of his situation and rank as post-captain in His Majesty's Navy, in consequence of a verdict pronouncing your memorialist guilty of an offence of which he was entirely and absolutely innocent. That during the whole course of your memorialist's life, up to the day on which he was charged with the crime of conspiring with others to raise false reports for the purpose of fraudulently effecting a rise in the price of the public funds, the character and conduct of your

Chairman—continued.

memorialist were without reproach; and numerous as have been the transactions in which your memorialist has subsequently engaged, he has amid them all, uniformly preserved, though not an unassailed, yet an unshaken and unsullied character. That your memorialist has never ceased, and never can cease, to assert his absolute innocence of the crime of which he was pronounced guilty. He asserts it now, most solemnly, as in the presence of Almighty God, and certain he is, if every doubt be not dissipated in this world, that when summoned to enter more immediately into that Awful and Infinite Presence, he shall not fail, with his last breath, most solemnly to assert his innocence. That it was your memorialist's consciousness of innocence that contributed, perhaps, more than any other cause, to produce his conviction, because it rendered him confident and much less careful in making the necessary preparations for his defence than he ought to have been, or than he would have been, if guilty; while, on the other hand, there existed the utmost zeal, industry, and skill in the conduct of the prosecution. That your memorialist did all that was possible to procure a revision of his case; but as he had laboured under the disadvantage of being included in and tried under the same indictment with some who had probably no reason to complain of the result, as well as the still greater disadvantage of having his defence blended with theirs, so was he denied a new trial for the same reason; "it

Hon. Lord *Cochrane.*

8 June 1877.

Chairman—continued.

"it being a rule of court that a new trial "should not be allowed to any individual "tried for conspiracy unless all the parties "should appear in court to join in the appli- "cation, which, in the case of your memo- "rialist, could not possibly be, some of the "parties having quitted the country on the "verdict being pronounced against them. "That your memorialist has never been able "to obtain a re-investigation of his extra- "ordinary case, nor to obtain redress in "any way; but now that your Royal High- "ness is Lord High Admiral, and has, "among other illustrious acts, distinguished "yourself in that capacity, by doing justice "to meritorious officers, your memorialist "feels that he has everything to hope from "the magnanimity of your Royal Highness. "That it is indeed certain, that nothing can "be more repugnant to the feelings of your "Royal Highness, than that an individual "who zealously devoted himself to the naval "service of his king and country, as your "Royal Highness knows your memorialist "to have done, should be for ever cut "off from the service without the most "unquestionable certainty of the rectitude "of so severe an infliction. So far, there- "fore, as depends on your Royal High- "ness, your memorialist cannot but con- "fidently entertain the hope that he shall "not be doomed to remain all his life "long the victim of a verdict, of which "he has not only never ceased to complain, "but which he knows that he has proved "to be unfounded, to the satisfaction of "those who have examined as well, what "was advanced against him at the trial, as "what he has since adduced in his own justi- "fication. Your memorialist, therefore, is "encouraged most respectfully, to solicit "your Royal Highness to represent his case, "a case of peculiar and unprecedented hard- "ship, to His Most Sacred Majesty, and to "advocate his cause; and if happily for your "memorialist, His Most Sacred Majesty, re- "cognising the innocence of your memorial- "ist, and taking his long protracted and "unmerited sufferings into his gracious con- "sideration, should, of His most gracious "pleasure, vouchsafe to reinstate your me- "morialist in that rank and station in his "Royal Navy which he previously held, "your memorialist will ever maintain the "deepest and most grateful sense of his duty "to His Most Sacred Majesty and to your "Royal Highness, and will never cease to "testify his gratitude by all the means in his "power"?—Yes.

Answer to above Memorial.

5. Can you state the answer received to that?—"The King's Cabinet cannot comply with the prayer of the memorial."

Mr. *Russell Gurney.*

6. What was the date of the answer?—14th of June 1828.

Chairman.

7. Will you state when the next application was?—The next application was a brief memorial which accompanied a review of his case to King William the Fourth on the 10th of December 1830 by Lord Melbourne, the then Home Secretary (*handing the memorial to the Chairman*).

Chairman—continued.

8. That memorial is as follows:

Memorial to Will. 4, 10 Dec. 1830.

"To His Most Gracious Majesty, &c., "&c. Assured that the memorial which I "laid before your Majesty when Lord High "Admiral" (that is one which we have "alread read) "was honoured with your ear- "nest consideration, and that your Majesty "was graciously pleased to make an effort "on my behalf, with the desire of restoring "me to my station in the Navy; assured, "too, that had not the Ministers of his late "Most Gracious Majesty been opposed to "the prayer of my memorial, I should then "have been restored; and believing that no "such obstacle to your Majesty's favour "would be now interposed, I have every "reason to hope that the auspicious moment "is at length arrived when the redress which "I have so long sought will be freely be- "stowed by my Most Gracious Sovereign. "I beseech your Majesty to condescend to "receive the accompanying review of my "case, which, I trust, will prove to your "Majesty that I am not unworthy of that act "of your Majesty's favour, which I humbly "solicit. It is not because I have undergone "a sentence heavier than the law pronounced, "it is not because I have been deprived for "sixteen years of the rank and honours which "I acquired in the Royal Navy, nor is it be- "cause I am deserving of any consideration "on account of services rendered to my King "and country that I now presume to appeal "to your Majesty, though no one is more "likely than your Majesty to feel for my "sufferings, and no one more competent to "appreciate my services; but it is because "I had no participation in, and no knowledge, "not even the most indistinct or remote, of "the crime under the imputation of which "I have been so variously and so unceasingly "punished. It is this alone which impels me "to approach your Majesty, and this alone "which enables me"?—Yes.

9. Have you any answer to that?—I have no answer to that.

10. What was the next memorial?—I have no other memorial.

11. The next memorial I think was in 1832; it is dated "Southampton, the 2nd of April 1832." Have you a copy of that amongst your papers?—No, I have not; but I have a letter from Lord Durham which refers to that memorial.

12. I will read the memorial. I have it here in a book which has come from the Admiralty.

Memorial to Will. 4, 2 April 1832.

"To His Most Gracious Majesty King "William in Council, the Memorial of "Thomas, Earl of Dundonald, humbly "sheweth that your Memorialist begs leave, "in the first place, to offer the sincere ex- "pression of his gratitude to your Majesty for "the gracious exercise of the noblest preroga- "tive of the Crown, by which your Majesty "has been pleased in compliance with the "prayer of the humble petition of Catherine, "Countess of Dundonald, to relieve the Me- "morialist and his family from great mental "anguish and distress, and from the afflicting "consequences

Chairman—continued.

"consequences of the sentence of a court of "law, which, without meaning to impeach the "conduct of the jury in consequence of whose "verdict it was inflicted, did entail on your "Memorialist sufferings under which nothing "could have supported him but a consciousness that they were not deserved. With "this asssurance your Memorialist ventures "once more to appeal to your Majesty's most "benevolent heart, humbly hoping that your "Majesty will be graciously pleased to restore your Memorialist to his rank and "station in the Royal Navy, a service to "which he is, and ever has been, devotedly "attached, and to his Sovereign's most "sacred person and Government, and your "Memorialist, as in duty bound, will ever "pray. (Signed) *Dundonald.* Southampton, 2 April 1832."

The Minute with reference to that is as follows:—

Privy Council Minute, 12 April 1832.

"At the Court of St. James's, the 12th "April 1832. Present: the King's Most "Excellent Majesty in Council. Upon "reading this day at the Board a Memorial "of Lord Dundonald, praying to be restored "to his rank in the Royal Navy, it is ordered by His Majesty, by and with the "advice of His Privy Council, that the said "Memorial (copy whereof is hereunto annexed) be, and the same is hereby referred "to the Right Honourable Lords Commissioners of the Admiralty to consider the "same and report their opinion thereupon "to His Majesty at this Board. (Signed) "*Wm. L. Bathurst.*"

Will you kindly explain if there was any memorial presented to the King before the one just read to the Committee?—The Countess of Dundonald went to Brighton, where the King then was, asking for justice to be done to her husband, and the King's answer was, that he should see that justice was done.

13. You say that is the circumstance to which Lord Dundonald refers in this memorial which I have just read?—I believe that the memorial refers to that circumstance. I believe that I can explain it in that way.

14. The next document as it stands is a document dated the 16th of April, also attached to this Order of the Admiralty, a docket which has not a signature:

Admiralty Docket, 16 April 1832.

"Inform the Secretary of State for the "Home Department that their Lordships, "having had a memorial from Lord Dun"donald to the King in Council referred to "them, wherein it is stated that His Majesty "has been pleased to relieve Lord Dundonald "from the afflicting consequences of a sen"tence of a court of law, their Lordships beg "to know if this is the fact."

Mr. *Walpole.*

15. I think you said you had some letter from Lord Durham; there was some letter written by Lord Durham which was in the possession of Lord Dundonald relating to this application which was made to the Home Office and the Admiralty for the restoration of rank, was there not?—Yes.

16. Would you read what that letter says?—This is an extract from a letter from Lord Durham to Lord Dundonald, dated the 16th of April 1832:

Hon. Lord *Cochrane.*

8 June 1877.

Lord Durham's Letter, 16 April 1832.

"I was happy to hear your memorial to "the King read in Council and referred to "the Admiralty."

"I trust we may eventually have the "means of doing an act of private as well as "of public justice, and that I shall see you re"stored to that service of which you are the "highest ornament. But you well know that "you have had not only my best wishes, but "my warmest exertions, for the attainment of "that object."

Mr. *William Holms.*

17. What position did Lord Durham then hold?—He was Lord Privy Seal.

Mr. *Walpole.*

18. Was not Lord Grey the First Lord of the Treasury and Prime Minister at that time?—Yes.

19. Did Lord Grey write any letter to Lord Dundonald upon the subject of this memorial?—That was with reference to a "review" of his case, which he sent to Lord Grey, and with reference to the memorial.

20. What is the date of the letter?—It is dated the 12th of December 1830.

Chairman.

21. Will you state, please, the next step that either your grandfather took, or that took place in the proceedings?—At a Privy Council held on 2nd May 1832, a free pardon was granted to the Earl of Dundonald.

Mr. *Russell Gurney.*

22. Where did you take that date from?—I took it from my grandfather's autobiography.

Chairman.

23. I will read the official document with reference to that which I have in my hand:

Warrant for free pardon of Lord Dundonald, 1832.

"William the Fourth, by the grace of "God, etc., to all to whom these presents shall "come, Greeting: Whereas at the general "session of oyer and terminer holden for the "city of London on the twentieth day of "April in the fifty-fourth year of the reign of "our late royal father, King George the "Third, an indictment was found against "Thomas, Earl of Dundonald, of that part of "our United Kingdom of Great Britain and "Ireland called Scotland, by the name and "description of Sir Thomas Cochrane (com"monly called Lord Cochrane), late of the "parish of Saint George, Hanover-square, in "the county of Middlesex, Knight of the "Bath, and others therein named, for certain "conspiracies and misdemeanours, which in"dictment his said late Majesty afterwards, "for certain reasons, caused to be brought "before him, to be determined according to "the law and custom of England, and such "proceedings were had thereupon that at the "sittings at *nisi prius*, holden in and for the "said city after Easter term, in the fifty-"fourth year of the reign aforesaid, the said "Thomas Earl of Dundonald was in due "form of law convicted of the premises "charged upon him in and by the third, "fourth, fifth, sixth, seventh, and eighth "counts

Hon. Lord *Cochrane.*

8 June 1877.

Chairman—continued.

"counts of the said indictment as by the "said indictment and proceeding thereupon "remaining of record in our said Court "before us (relation being thereunto had) "may more fully and at large appear: And "whereas upon consideration of some circumstances humbly represented to us on behalf "of the said Thomas Earl of Dundonald, We "are graciously pleased to extend our grace "and mercy unto him, and to grant him our "free pardon for the said offences whereof he "hath been convicted as aforesaid: Know "ye therefore, that we, being moved with "compassion, have pardoned, remitted, and "released, and by these presents for us, our "heirs and successors, do pardon, remit, and "release the said Thomas Earl of Dundonald, "or by whatsover other name or surname, or "addition of name or surname, dignity, profession, mystery, or place he may be known, "called, or named, or lately was deemed, "called, or known, the said offences whereof "he is convicted as aforesaid, and all and "singular indictments, impeachments, inquisitions, informations, suits, plaints, "exigents, judgments, attainders, outlawries, convictions, executions, corporal imprisonments, pains, penalties, forfeitures, "demands, or other punishments whatsoever, which he, the said Thomas Earl of "Dundonald, hath incurred, or is subject to "for, or by reason thereof, or which we now "have or can claim or have had, or which "we, our heirs or successors, may hereafter, "in any manner have or claim against him "the said Thomas Earl of Dundonald for or "by reason of the offences aforesaid whereof "he is convicted: And we do by these "presents give and grant unto him our firm "peace thereupon; and further we strictly "command all and singular judges, justices, "and all others whatsoever, that this our "present free and gracious pardon shall be "construed, expounded, and adjudged in all "our courts and elsewhere by the general "words, clauses, and sentences abovesaid in "the largest and most beneficial sense for the "most full and firm discharge of him the said "Thomas Earl of Dundonald, according to "our true intention expressed in these our "letters patent, without any ambiguity, question, or delay whatsoever, and without any "writ of allowance whatsoever obtained or "to be obtained from us, our heirs or successors. In witness, &c., *T. Denman.* "May it please your Most Excellent Majesty, this contains your Majesty's most "free and gracious pardon unto Thomas "Earl of Dundonald, of that part of your "United Kingdom of Great Britain and "Ireland called Scotland, for certain conspiracies and misdemeanours of which he "stands convicted, and of all indictments, "convictions, imprisonments, pains, forfeitures, and penalties incurred by reason "thereof, and this Bill is prepared by warrant signed under Your Majesty's Royal "Sign Manual, countersigned by Lord Viscount Melbourne. *T. Denman,* Lincoln's "Inn, 26th July 1832";

Will you proceed to state what ensued upon that pardon being issued?—In the "Gazette" of the 8th May 1832, under the heading, Admiralty Offices, the 2nd May 1832, there is this passage:

Chairman—continued.

"This day, in pursuance of His Majesty's "pleasure, the Earl of Dundonald was pro- "moted to be Rear Admiral of the Blue, "taking rank next after the Honourable "George Lawrence Heneage Dundas." "London Gazette," 8 May 1832.

24. The original document is as follows:

"At the Court at St. James's, the 2nd "May 1832, Present, the King's Most Excellent Majesty in Council: Whereas, "there was this day read at the Board a "Report from the Right Honourable the "Lords Commissioners of the Admiralty, "dated the 23rd of last month, in the "words following, viz.: 'Your Majesty "'having been graciously pleased, by Your "'Order in Council, dated the 12th instant, "'to refer unto us, for our consideration and "'opinion, the humble memorial of the Earl "'of Dundonald, setting forth that he had "'been struck off the list of officers of Your "'Majesty's Navy, and praying to be re-"'instated in his rank and station therein, "'We do most humbly report to Your "'Majesty that the name of the Earl of "'Dundonald (then Lord Cochrane) was "'removed from the list of Captains of the "'Royal Navy on account of his conviction "'before a civil tribunal for a misdemeanour "'which Your Majesty has been graciously "'pleased to pardon, by an Instrument under "'your Majesty's Great Seal, dated the "'24th of last month; and with a view to "'give full effect to this act of grace, we "'are humbly of opinion that the memorialist should resume his place on the list "'of Rear Admirals of Your Majesty's "'Fleet, which he would now have held if "'he had not been removed from the list. "'And we do most humbly recommend "'that Your Majesty will be graciously "'pleased by Your Order in Council to "'direct that he be reinstated in his rank "'and station accordingly; and that his "'half-pay do commence from the date of "'Your Majesty's said Order in Council.' "His Majesty having taken the said Report "into consideration, was pleased, by and "with the advice of His Privy Council, to "approve of what is therein proposed; and "with a view to give effect to a pardon "given by His Majesty to the said Earl of "Dundonald for the said offence, His Majesty is further pleased to order that the "Earl of Dundonald should resume his place "on the list of Rear Admirals of His Majesty's Fleet, which situation he would "have been entitled to hold if he had not "been removed from the list, and that the "said Earl of Dundonald be, and he is "hereby reinstated in his rank and station "accordingly, and that his half-pay do "commence from the date of this Order. "(signed) *Wm. L. Bathurst.*" Order in Council, restoring Lord Dundonald to the Navy, 2 May 1832.

Then the following letter is a letter from the Admiralty, dated 23rd of April 1832:

"May it please Your Majesty, Your Ma- "jesty having been graciously pleased by "your Order in Council, dated the 12th "instant, to refer unto us for our considera- "tion Admiralty Letter, recommending the

restoration of Lord Dundonald to the Navy, 23 April 1832.

Chairman—continued.

" tion and opinion, the humble memorial of " the Earl of Dundonald, setting forth that " he had been struck off the list of officers " of Your Majesty's Navy, and praying to " be reinstated in his rank and station " therein, we do most humbly report to " Your Majesty that the name of the Earl " of Dundonald (then Lord Cochrane) was " removed from the list of Captains of the " Royal Navy on account of his conviction " before a civil tribunal for a misdemeanour, " which Your Majesty has been graciously " pleased to pardon by an instrument under " Your Majesty's Great Seal, dated the 24th " of last March, and with a view to give full " effect to this act of grace, we are humbly " of opinion that the memorialist should " resume his place on the list of Rear Admirals of Your Majesty's Fleet, which he " would now have held if he had not been " removed from the list, and we do most " humbly recommend that Your Majesty will " be graciously pleased by Your Order in " Council to direct that he be reinstated in " his rank and station accordingly; and that " his half-pay do commence from the date " of Your Majesty's said Order in Council, " which is nevertheless most humbly submitted. *T. M. Hardy. G. H. T. Dundas.* " Admiralty Office, 23rd April 1832."

Mr. *Butt.*

25. In the official manuscript book before me, I find this:

" Whereas Thomas, Earl of Dundonald, " was at the sitting at *nisi prius* holden for " our City of London after Easter Term " 1814, tried and convicted in our Court of " King's Bench of a conspiracy, with others, " to raise the price of the public funds, and " on the Trinity Term following, viz., on the " 21st day of June 1814, was sentenced to " pay a fine of 1,000*l.*; to be imprisoned in " the custody of the Marshall of the Marshalsea of the Court of King's Bench for " twelve calendar months, and to be set in " and upon the pillory opposite to the Royal " Exchange in the City of London for the " space of one hour; and further to be kept " in safe custody until he should have paid " the said fine: We, in consideration of some " circumstance humbly represented unto us, " are graciously pleased to extend our grace " and mercy unto him, and to grant him, the " said Thomas, Earl of Dundonald, our free " pardon for his said crime. Our will and " pleasure therefore is, that you do take due " notice thereof, and for so doing, &c., 24th " March 1832. To Our Right Trusty and " Well-beloved Councillor Charles Lord " Tenterden, Our Chief Justice, and the rest " of Our Justices of Our Court of King's " Bench, and all, &c. By His Majesty's " Command, *Melbourne.*"

Did you wish to explain anything in reference to the delay?—My grandfather accounts for the delay by the Reform Bill at that time.

Chairman.

26. Will you state the next step that was taken in the case?—What you have read from the "Gazette" already is the next step.

Chairman—continued.

27. Will you state the next circumstances which took place after his restoration to the service?—The next step was an application for the restoration of the Order of the Bath. I have only got a note of this. In 1842, Lord Dundonald applied for a restoration of the Order of the Bath, which was refused by the Government through Lord Haddington.

28. Will you state the next application?—In 1844, Lord Dundonald again applied for a restoration of the Order of the Bath through Sir Robert Peel, and was again refused.

Mr. *Walpole.*

29. Have you Sir Robert Peel's letter?—No, I have not.

Mr. *Tremayne.*

30. Are the letters from Lord Haddington or from Sir Robert Peel in your possession?—I have looked for them, but I have been unable to find any letters.

Chairman.

31. Will you state the next application, if you please, that your grandfather made for the restoration of the Order of the Bath?—There seems to have been no further application, as the next step taken was the restoration of the Bath.

32. Will you read any document that you have bearing upon that?—Perhaps I may be allowed to state this, that in 1847 my grandfather published a review of his case, which I have here (*pointing to a book*), and I may also be permitted to read a letter from Sir Thomas Hastings to my grandfather, of the 2nd of March 1847.

33. Upon what point does it bear?—It is in reference, I think, to the Order of the Bath; the approaching restoration of the Order of the Bath.

34. Will you hand next the letter that you refer to of Sir Thomas Hastings?—Yes (*handing it to the Chairman*).

35. Will you mention any documents that you have relating to the restoration to the Order of the Bath?—I have simply a general statement; it is not a document.

36. Will you read it, if you please?—On the 25th of May 1847, Lord Dundonald was given back his Knight Grand Cross of the Order of the Bath. This act of grace was rendered more graceful by the personal interest shown by Prince Albert, who as Grand Master of the Order, dispensed with the customary formalities and delays, and on the following morning, caused a warrant to be sent to Lord Dundonald, in order that he might wear the Cross at the birth-day drawing room, which he attended by Her Majesty's command on the 27th of May, the warrant being dated the 22nd of May. The installation did not take place until the 12th of July 1847.

37. What was the next application made by your grandfather?—The next application was a letter from my grandfather to Lord Palmerston, dated the 26th of May 1856, with reference to his banner being replaced in King Henry the 7th's Chapel, and to direct the repayment of the fine inflicted by the Court of King's Bench and the restoration of his back half-pay.

38. Is that the first time he applied for the restoration of his pay?—Yes.

Hon. Lord Cochrane.
8 June 1877.

Mr. *Russell Gurney.*

39. Do you mean that there was no application for the back pay till 1856?—I have not found any before.

Chairman.

40. Will you read that?—This is an extract:

"There yet remains, my dear lord, a "gracious and important act to perform, "namely, to order my banner to be re- "placed in King Henry the 7th's Chapel, "and to direct the repayment of the fine "inflicted by the Court of King's Bench "and the restoration of my half-pay sus- "pended during my removal from the naval "service."

Mr. *Solicitor General.*

41. That appears to be an extract; have you got the whole document of which that is an extract?—No, I have only got the extract.

42. Where did you get it from?—I got it from a "life" of my grandfather, written by my father.

43. The form of it seems to be rather that of a private letter than that of a memorial?—I fancy it is.

Mr. *Walpole.*

44. In 1854 did your grandfather receive any intimation from the late Prince Consort with reference to an appointment which he wished to give him to the Trinity House?—He did. I hold in my hand an autograph letter from the Prince Consort.

45. Will you read that letter?—

Letter of Prince Albert, 26 Nov. 1854.

"My dear Lord, a vacancy has occurred "in the list of Honorary Brethren of the "Trinity House by the lamented death of "Sir Byan Martin. It has always been "customary in that Corporation to have "the Royal Navy represented amongst the "Elder Brethren by one of its most dis- "tinguished officers. I therefore write to "inquire whether it would be agreeable to "you to be elected a member of that body, "as I should in that case have much plea- "sure in proposing, as Master of the Cor- "poration, your name for the election of "the Elder Brethren. Believe me always, "my dear Lord, yours truly, *Albert.* Wind- "sor Castle, 26th November 1854."

46. Was your grandfather appointed one of the honorary members of the Trinity House?—He was.

Chairman.

47. Is there any answer from Lord Palmerston to the application to him which you read just now?—I have no answer in my possession; there was a refusal.

48. Will you state the next application, if you please?—I believe that was my grandfather's last application. I may say, in reference to the former question, that there is an extract of Lord Palmerston's answer in my father's life of my grandfather.

49. To which application?—To the first application, the 26th of May 1856.

50. You said just now that there was no application for back-pay till 1856, but was there not an application made by your grandfather for the restoration of his back-pay in 1848?—I have no record of any.

Chairman—continued.

51. That is in these terms:

"Admiralty Board, 14th January 1848. Admiralty Minute by Lord Auckland, 14 Jan. 1848.
"Lord Dundonald has requested me (this "is signed by Lord Auckland, their First "Lord) to lay before the Board a memo- "rial from him, praying that the arrears of "the half-pay which was withheld from him "from the year 1814 to that of 1831, dur- "ing which his name did not appear upon "the Navy List, should be, as an act of "justice, restored to him. And he has "stated to me, as one of the grounds of this "application, that when rank and honours "were, after dismissal from the service, re- "stored to Sir Robert Wilson, a memorial "from that officer, addressed to the Secre- "tary at War, and praying for the arrears of "his half-pay with reference to 'his signal "services, hitherto unrewarded,' was sub- "mitted to the Treasury, and the arrears "were awarded to him. Lord Dundonald "assumes that it is within the peculiar pro- "vince of the Board of Admiralty to redress "the infliction under which he labours; but "we can do no more than refer his memorial "to the Treasury with such observations as "may occur to us upon it. As it appears to "me we might bear ample testimony to the "services of Lord Dundonald, though these "are so notorious as only to require a gene- "ral allusion to them: but we are also "bound to state that we have upon the re- "cords of the Navy no precedent of any such "restoration of half-pay; and it will be for "the Treasury to decide whether the emi- "nent services of Lord Dundonald should "not make his case one of special excep- "tion from the general rule. Signed, *Auck- "land.*"

Then on the 17th of January 1848, this letter was sent from the Admiralty to the Treasury:

Admiralty Letter to Treasury, 17 Jan. 1848.
"Sir, I am commanded by my Lord Com- "missioners of the Admiralty to acquaint "you, for the information of the Lords of "Her Majesty's Treasury, that they have "received a memorial from Vice Admiral the "Earl of Dundonald, praying that the "arrear of the half-pay, which was withheld "from him from the year 1814 to the year "1831, during which period his name did "not appear upon the Navy List, should "be, as an act of justice, restored to him, "now that he has been restored to his rank "and former honours. I am to add that my "Lords, in transmitting the enclosed copy "of the memorial of the Earl of Dundonald, "feel bound to state that they know of no "precedent in the naval service for any "similar restoration of half-pay. In the "Army there is a precedent, the case of "Sir Robert Wilson, who was also dismissed "from the service, but who claimed, and "obtained, the arrears of his half-pay when "restored to his former position in the "Army, upon the ground of 'signal services, "'hitherto unrewarded.' If a similar plea "be admitted in the present instance, my "Lords can entertain little doubt as to the "result of the present application, no man "now alive having done more, and few as "much, as Lord Dundonald to illustrate the "service to which he belongs. Under the "circumstances,

Chairman—continued.

" circumstances, their Lordships can only " refer the case to the Lords of the Treasury, and request their decision as to the " propriety of conceding the whole claim, or " such proportion of it as they may think " fit. I am, Sir, your most obedient, humble " servant, *H. G. Ward.*"

Then on the 24th of January 1848, this letter was written to the Admiralty:

Treasury Answer to Admiralty, 24 Jan. 1848.

" Treasury Chambers: Sir, In reply to " your letter, dated the 17th instant, I am " commanded by the Lords Commissioners " of Her Majesty's Treasury to request that " you will move the Lords Commissioners " of the Admiralty to cause this Board to be " informed of the date of Lord Dundonald's " restoration to Her Majesty's Service, and " of the time from which he has received " half-pay."

And that is signed " *C. E. Trevelyan,*" and is addressed to the Secretary of the Admiralty. Then follows this letter:

Admiralty Letter to Treasury, 24 Jan. 1848.

" Admiralty, 24th January 1848: Sir, " with reference to your letter of this day's " date, I am commanded by my Lord Commissioners of the Admiralty to request " that you will acquaint the Lords Commissioners of Her Majesty's Treasury that the " date of the Earl of Dundonald's restoration " to Her Majesty's Service is the 2nd May " 1832, and that his lordship has received " his half-pay from that date."

That is signed " *H. G. Ward.*" Then follows this letter from the Treasury, dated the 3rd of February 1848:

Treasury Letter to Admiralty, 3 Feb. 1841, relating to Sir Robert Wilson's case.

" Sir, with reference to your letter, dated " the 24th ultimo, respecting the application " from the Earl of Dundonald to receive the " arrear of half-pay which was withheld for " the period during which his name did not " appear upon the Navy List, I am commanded by the Lords Commissioners of " Her Majesty's Treasury to request that " you will apprize the Lords Commissioners " of the Admiralty that they are mistaken " in supposing that in the case of Lieutenant " General Sir Robert Wilson, to which " they have referred, that officer obtained " the arrears of half-pay for any period previous to the date of his restoration to the " service. It appears from your communication above referred to, that Lord Dun- " donald has already received half-pay from " the date of his restoration to his rank, and " my lords do not feel themselves justified in " sanctioning the issue of half-pay to his " lordship for a period antecedent to that " date."

And this is the memorial to which the Admiralty and the Treasury letters refer:

Memorial of the late Lord Dundonald to the Admiralty, requesting payment of arrears of half-pay, 1848.

" To the Right Honourable the Lords " Commissioners of the Admiralty. The " memorial of Vice-Admiral the Earl Dun- " donald respectfully showeth, That Her " most Gracious Majesty, acting by the de- " liberate counsel of Her Majesty's constitu- " tional advisers, did restore your memo- " rialist to the distinguished honours whereof " he had been deprived, in consequence of a " verdict founded on circumstantial infer- " ences, deduced from a combination of acci-

Chairman—continued.

" dental circumstances. That the above- " mentioned gracious act of Her Majesty, " although complete as a justification of the " unsullied character of your memorialist, is " nevertheless still attended by inflictions, " one of which your memorialist deems " within the peculiar province of your lord- " ships to redress. That during the suspen- " sion of the naval rank of your memorialist " (in consequence of the aforesaid erroneous " verdict) the half-pay of your memorialist " was withheld from the year 1814 to the " year 1831. That your memorialist is not " aware of any similar naval case on record, " nor of any motive for withholding the said " pay, whether deemed a recompense for " past or prospective service. Therefore " your memorialist most respectfully prays " that your lordships will be pleased to erase " this peculiar instance of infliction from " the naval record, by restoring to your " memorialist the arrears of half-pay, which " he respectfully submits is in justice due. " (signed) *Dundonald.*"

Will you state the next application made after those of 1856 and 1857 to which you have already referred?—I have here an extract from a letter to Lord Palmerston from Lord Dundonald, dated 7th of June 1856.

Mr. *Russell Gurney.*

52. Where does it come from?—That is an extract from the same source as I have already mentioned.

Chairman.

53. Will you go on, please, to the next application in order of date?—I can find no other application.

54. Is there not an application in July 1864?—In July 1864 there was an application from my father, not from my grandfather.

55. Will you state what that was?—Whether it was official I cannot tell you; I have only a rough copy with me.

Mr. *Solicitor General.*

56. To whom did it go?—It was a petition to Her Majesty.

Chairman.

57. That memorial is as follows:—It is docketed

Memorial from Lord Dundonald to the Queen for compensation, &c., 21 July 1864.

" 21st July 1864: Memorial from Lord " Dundonald to the Queen, for compensation, " &c., in consideration of the services of his " late father."

" The Memorial of Thomas Earl of Dun- " donald sheweth, That your memorialist is " prompted by a sense of duty to himself and " his family humbly to approach the Throne, " earnestly praying that your Majesty will " be graciously pleased to cause inquiry to " be made into the circumstances hereinafter " appearing, and justice to be done thereon, " and compensation to be granted to your " memorialist in consideration of the services " performed by his late father, Thomas, " Tenth Earl of Dundonald, having mani- " fested an early and unconquerable predi- " lection for the profession of the Navy to- " wards the close of the 18th century, an " era pre-eminently the heroic age of British " seamen, and displaying from the outset of " his

Hon. Lord *Cochrane.*

8 June 1877.

Chairman—continued.

" his career a peculiar aptitude and enthu-
" siasm for his profession, he was rapidly
" promoted, on the recommendation of his
" superior officers, until in the year 1800,
" he was appointed to command the 'Speedy,'
" a vessel of 158 tons, armed with 14 four-
" pounders, and carrying a crew of 54 men
" of all grades. During a cruise of 13
" months, with this very insignificant equip-
" ment he executed a series of those ener-
" getic and well planned operations, which
" enabled him to capture upwards of 50
" vessels, 122 guns, and 534 prisoners.
" Amongst other instances of his success at
" this period, with the small force at his com-
" mand, may be mentioned the capture by
" him in the 'Speedy,' of the Spanish of the
" Xebec frigate 'El Gamo,' of 32 guns, with
" a crew of 320 officers, seamen, and super-
" numeraries and marines. His Lordship's
" subsequent cruise in the 'Pallas' confirmed
" the prestige which his initiatory exploits
" had established, for in the face of seemingly
" insurmountable obstacles, he continued
" unceasingly to carry out, board, and take
" prizes with a promptitude of conception and
" dexterity of action theretofore unrivalled.
" On the 6th April 1806, at the mouth of the
" Garonne, the boats' crews from his ship
" boarded and cut out from under two heavy
" batteries, the French corvette, 'La Tapa-
" geuse,' of 14 long 12-pounders and 95 men;
" and immediately afterwards, with only 40
" men on board his frigate, he chased and
" drove on shore and wrecked one ship of 24
" guns, and another of 22 guns, and a third
" of 18 guns. On the 23rd August 1806,
" he hoisted his flag in the 'Imperieuse'
" frigate, and after taking part in various
" important movements, was instructed by
" Lord Collingwood in the beginning of
" February 1808, 'whereas the Spanish and
" 'French coasts as opportunity served.'
" The recital of his services thenceforth, up
" to the date of his being put on half-pay,
" has excited the admiration of every naval
" officer, and has been the theme of historians
" in every country of the world. On the
" seaboard of Spain and France, he des-
" troyed batteries and telegraphic stations,
" and blew up forts and roads to so great an
" extent that he prevented the march of a
" French army into Catalonia at a most
" eventful period of the war. His defence
" of the Castle of Rosas, after it had been
" evacuated and pronounced untenable by
" his superior officers, would of itself stamp
" his name on the annals of his time. In
" order to reassure the Spanish garrison,
" his Lordship led part of his ship's crew
" into the fortress, commanded by batteries
" of a most formidable description, and to
" which no counter-fire could be opposed.
" With a calculating foresight that provided
" against any emergency, and could discover
" munitions of resistance in materials over-
" looked by others, and by the effective
" employment of original and ingenious de-
" vices, he kept possession of the castle for a
" considerable period, and repulsed a storm-
" ing party of 1,200 men, commanded by
" officers of distinguished merit, detached
" from the main body of the French, be-

Chairman—continued.

" seiging the fortress. During his occupation
" of the fort he received a very painful
" wound. In addition to these services, at
" the urgent and repeated request of the
" then First Lord of the Admiralty, Lord
" Dundonald planned and personally con-
" ducted the attack which was made on the
" French fleet in the Basque Roads, on the
" night of the 11th April 1809. Embark-
" ing in an explosive vessel he fired the train
" with his own hand, and was the last man
" to quit the ship, which exploded with such
" effect that the boom (the heaviest that had
" ever been constructed) was shivered into
" fragments throughout its own length of
" nearly two miles, and 14 of the enemy's
" vessels were run aground and abandoned,
" two only remaining afloat. It has been
" admitted by competent authorities, that
" had the British squadron, or a portion of
" it, afterwards entered the Aix Roads, in
" reply to the signals of Lord Dundonald,
" the whole of the stranded ships would have
" been taken or destroyed. However, Lord
" Dundonald took upon himself to stand in
" with his frigate, and compelled the store
" ship of the French fleet, the 'Calcutta,' of
" 56 guns, to strike to him, some assistance
" having been tardily afforded, three more
" ships of 74 guns each were taken and
" burnt. For these important services Lord
" Dundonald never received any special re-
" ward, although pensions and peerages have
" been awarded to other military and naval
" officers distinguished in the service of their
" country. In 1814 a verdict of 'Guilty'
" was pronounced against Lord Dundonald
" and several other persons included in the
" same indictment for conspiracy. He was
" heavily fined, imprisoned, and deprived
" of his commission, as well as of the
" honours which had been conferred on him.
" Eighteen years afterwards (in the year
" 1832) Lord Dundonald was restored to his
" rank in the Navy by his late Majesty King
" William the Fourth, upon his non-com-
" plicity in the transaction of which he had
" been found guilty having been satis-
" factorily proved, and your Majesty most
" graciously added the restitution of his
" honours. The lamented Prince Consort
" demonstrated the estimation in which he
" held your memorialist's father by trans-
" mitting a letter under his own hand,
" requesting him to become a senior member
" of the Trinity House Corporation, of which
" his Royal Highness was Master; and on a
" copy of 'The Autobiography of a Seaman'
" being forwarded to the illustrious Prince,
" he was pleased to desire that the author
" should write a statement on the fly-leaf
" that the same was a presentation copy, and
" append his autograph, which was accord-
" ingly done. Your Most Gracious Majesty
" was further pleased to command that Lord
" Dundonald's banner should be replaced in
" the Chapel of King Henry VII., and that
" his remains should be enshrined in West-
" minster Abbey. The late Earl of Dun-
" donald was not possessed of any estate
" at the time of his death, and therefore
" your memorialist inherited no property
" whatever with the title of Earl of Dun-
" donald.

Chairman—continued.

" donald. Your memorialist humbly submits " that under the circumstances herein men- " tioned, the full and reasonable measure of " justice will not have been satisfied until the " arrears of pay due to the late Lord Dun- " donald at the time of his being restored to " his rank (of which he had been deprived in " consequence of a sentence since admitted " to be altogether erroneous and unjust) shall " have been paid, and the fine which was " imposed shall have been reimbursed to his " personal representative. May it therefore " please your Most Gracious Majesty, in " consideration of the important services " rendered to his country by the late Earl of " Dundonald, that the fine paid by the late " Earl of Dundonald be reimbursed, and the " arrears of pay due to him at the time of his " decease paid to your memorialist as the " personal representative of the late Earl of " Dundonald, and that a pension or such " other remuneration or reward as your " Most Gracious Majesty in your wisdom " may deem fitting may be granted to your " memorialist. And your memorialist will " ever pray, &c. (signed) *Dundonald*."

Then follows this letter:

Home Office Letter to Admiralty, transmitting Memorial, 23 July 1864.

" Whitehall, 23rd July 1864: Sir, I am " directed by Secretary Sir George Grey to " transmit to you to be laid before the Lords " Commissioners of the Admiralty, a memo- " rial which has been presented to the Queen " by the Earl of Dundonald, praying Her " Majesty that the fine paid by the late Earl " of Dundonald may be reimbursed, that the " arrears of pay due to him at the time of " his decease may be paid to his representa- " tive, and that a pension may be granted the " memorialist. I am, Sir, your obedient " servant, *T. G. Baring*."

And that is addressed to the Secretary to the Admiralty. Then the answer to that is as follows:

Admiralty Answer, 30 July 1864.

" Admiralty, 30th July 1864: Sir, In " reply to your letter of the 23rd instant, " transmitting a memorial, returned here- " with, presented to the Queen by the Earl of " Dundonald, praying that the fine paid by " the late Earl of Dundonald may be reim- " bursed, that the arrears of pay due to him " at the time of his decease may be paid " to his representative, and that a pension " may be granted the memorialist, I am com- " manded by my Lords Commissioners of " the Admiralty to acquaint you, for the in- " formation of the Secretary of State for " Home Affairs, that my Lords are of opinion " there is not any new ground for re-opening " the case as to the late Lord Dundonald's " pay; that when King William the Fourth " restored his Lordship to his rank in the " Navy, in the year 1833, he did not re- " commend these arrears to be paid; and " further, that an application for the pay- " ment of the same was made in the year " 1848, and refused by the Lords of the " Treasury. I am, Sir, your most obedient " humble servant, *W. G. Romaine*."

And that is addressed to the Under Secretary for the Home Department.

Mr. *Walpole*.

58. Your grandfather died in 1860, I believe?—Yes.

59. Were you a minor at that time;—Yes.

60. When did you attain your age of 21?—On the 29th of October 1873.

61. Did your grandfather leave anything to you by his will?—He did.

62. Have you got a copy of that part of the will here?—I have the will here with me.

63. Did your grandfather by his will bequeath to you all the monies due to him from the British Government for his important services, and also the amount of his back pay during his expulsion from the British Navy?—Yes.

Mr. *O'Byrne*.

64. What is the date of the will?—It was proved on the 3rd of June 1861.

Chairman.

65. Will you give us the date of your own application upon that, and the answer if you have it?—My own application was dated the 29th of February 1876.

66. Will you read it, if you please?—It is contained in my petition, which is already before the Committee.

67. Have you the answer to that?—I have; it is dated " Treasury Chambers, 3rd June 1876,"

68. Before you read that I will read this letter, dated " 9th March 1876, Treasury Chambers," and addressed to the Secretary of the Admiralty:

Treasury Letter, transmitting Lord Cochrane's Memorial to the Admiralty, 9 March 1876.

" Sir, I am directed by the Lords Com- " missioners of Her Majesty's Treasury to " transmit to you herewith the accom- " panying memorial from Lord Cochrane, " addressed to Her Majesty the Queen, " which has been placed in Mr. Disraeli's " hands, praying that compensation may be " awarded to him as the legatee of his grand- " father, the late Earl of Dundonald, in re- " spect of the pay and allowances of the late " Earl as a naval officer, for a period of 18 " years, extending from the year 1814 to the " year 1832, when he was restored to the " service. I am to request that you will " move the Lords Commissioners of the Ad- " miralty to favour my Lords with a state- " ment of the circumstances under which " Lord Dundonald was restored to his rank " in the Navy, together with any evidence " which may exist of the consideration of his " claim for pay during that interval, and of " the decision of the Board of Admiralty at " that time in regard thereto. I am, Sir, " your obedient Servant, *William Law*."

The answer to that is dated the 13th of May 1876:

Admiralty Answer, 13 May 1876.

" Sir, with reference to your letter of the " 9th March last, No. 3813-76, forwarding " a petition herewith returned from Lord " Cochrane, addressed to Her Majesty the " Queen, and requesting that you may be " furnished with a statement of the circum- " stances under which Lord Dundonald was " restored to his rank in the Navy, together " with any evidence which may exist of the " consideration of his claim for pay during " that interval, and of the decision of the " Board of Admiralty at that time in regard " thereto, I am commanded by my Lords

Hon. Lord *Cochrane.*

8 June 1877.

Chairman—continued.

" Commissioners of the Admiralty to enclose " to you, for the information of the Lords " Commissioners of Her Majesty's Treasury, " a precis of papers relating to the case of " the late Lord Dundonald from the records " in this office, and I am to add that the " originals can be furnished should the Lords " of the Treasury desire it. I am, Sir, " your obedient Servant, *Robert Hall.*"

Will you now read the answer that you received to your own application?—

Treasury Answer to Lord Cochrane, 3 June 1876.

" Treasury Chambers, 3 June 1876. My " Lord, I am directed by the Lords Commissioners of Her Majesty's Treasury, to " inform you that my Lords have given very " careful consideration to your memorial of " 29th February last, praying for a grant " of the pay and allowances which were with- " held from the late Earl of Dundonald " during the period between his dismissal " from the Royal Navy and his restoration " thereto. My Lords fully share in the ad- " miration with which all Englishmen re- " gard the brilliant services of the late Earl " of Dundonald; and if they could believe " that any further acknowledgment of his " merits was required, or that any fresh " public expression of regret for all his " lengthened sufferings was needed to com- " plete the reparation already made to him, " it would be a great satisfaction to them to " recommend the adoption of any course " which might deem to be suitable for the " purpose. But, from a review of the several " steps which have been taken in the resto- " ration of his Lordship to his position in the " Royal Navy, and to his honours as a Knight " Grand Cross of the Order of the Bath, as " well as in the employments which were " subsequently conferred upon him. My " Lords can come to no other conclusion " than that the recognition which you now " seek has been long since accorded; and " that the question raised in your memorial " narrows itself to one of precedent and of " the rules of the public service. So re- " garded the point to be decided is simply " this, whether pay or half-pay can, in any " case and under any circumstances, be " awarded to any officer in respect of a " period during which that officer was not in " Her Majesty's service. There is no pre- " cedent for such payment having at any " time been made. Referring to the case of " Sir Robert Wilson, my Lords find that " officer was deprived of his rank in the " year 1821, that he was restored in the " year 1832, and that his commission stated " that his rank was to be considered as bear- " ing date from the 27th May 1825. Sir " Robert was allowed to draw back pay for " the period between 1825, the date of his " rank, and 1832, but he was not allowed, " nor did he claim, pay between 1821 and " 1825; and my Lords observe that he ab- " stained from making any such claim, on " the ground that he regarded himself as " having been altogether out of the service " during those years. My Lords find that " the question of allowing back pay to Lord " Dundonald for the period during which he " was out of the service was fully considered " in 1858 by the Government of the day, and " was decided in the negative, with special " reference to the precedent in Sir Robert " Wilson's Case. This decision, they may " remark, was arrived at by an adminis- " tration which had already recognised his " Lordship's claims by advising his resto- " ration to the full honours of the Order of " the Bath, and his appointment to an im- " portant naval command. To reverse now " the decision at which the Government of " 1848 arrived on a question affecting the " rules of the military and naval services " would be most inconvenient; and my " Lords, therefore, regret to find themselves " unable to recommend a compliance with " your memorial. I am, my Lord, your " obedient servant, *William Law.*"

Mr. *Solicitor General.*

69. Could you tell me what was the period during which your grandfather was in the service of a foreign country?—I think he was in South America seven years.

70. From what date?—I do not know the exact date.

71. Will you find out by next Tuesday the dates of his service with respective Governments?—Yes; there was a long interval between this service in South America and Greece.

Chairman.

72. Have you anything else to state?—There is one link further to be mentioned in the chain of his restoration, that is, the restoration of the insignia of the Bath which he requested Lord Palmerston to order should be restored, and which were restored to King Henry the Seventh's Chapel on the 13th of November 1860.

Mr. *Butt.*

73. That was immediately after his death?—Yes.

Mr. *O'Byrne.*

74. But before his death were they replaced?—No. I have a statement of the fact here:

" Through the personal intervention of " Her Most Gracious Majesty and the " Prince Consort, Lord Dundonald's in- " signia of the Order of the Bath which had " been ignominiously spurned from King " Henry the Seventh's Chapel 51 years be- " fore, were restored to their place on the " 13th November 1860."

Chairman.

75. What is that from?—That is an extract from my father's life of my grandfather.

Tuesday, 12th June 1877.

MEMBERS PRESENT:

Sir Robert Anstruther.	Mr. Alfred Marten.
Mr. Baxter.	Mr. O'Byrne.
Mr. Butt.	Mr. Sackville.
Mr. Greene.	Mr. Solicitor General.
Mr. Russell Gurney.	Mr. Walpole.
Mr. William Holms.	Mr. Whitbread.

SIR ROBERT ANSTRUTHER, BART., IN THE CHAIR.

The Honourable DOUGLAS MACKINNON BAILLIE HAMILTON Lord COCHRANE, called in; and further Examined.

Hon. Lord *Cochrane.*
12 June 1877.

Mr. *Walpole.*

76. HAVE you the original of the memorial of Lord Cochrane presented by Sir Robert Preston to His Royal Highness the Lord High Admiral, afterwards William the Fourth, on the 4th of June 1828 (a copy of which is set out in the beginning of your evidence)?—Yes (*producing it*); I do not think it is the original, but a copy of the memorial sent by him.

Mr. *Marten.*

77. Did you find that among the papers of Lord Dundonald?—Yes.

Mr. *Walpole.*

78. Have you the answer which was given to that memorial?—Yes (*producing it*).

79. Will you read it?—It is addressed to Sir Robert Preston:

14 June 1828. Letter of of the Duke of Clarence.

"Admiralty, 14th June 1828. Dear "Sir,—Immediately on the receipt of the "memorial you brought me from Lord "Cochrane, I sent it to the Duke of Wel- "lington, with a request it might be con- "sidered by His Majesty's confidential ser- "vants, and last evening I had a communi- "cation from his Grace to state that the "King's Cabinet cannot comply with the "prayer of the memorial.—I remain, &c. "*William.*"

80. Are those the only documents relative to the application made in June 1828?—Yes.

81. You stated in your evidence that the next application was made in 1830?—Yes.

82. With reference to that memorial of 1830, do you find among your grandfather's papers a letter of Lord Melbourne, who was then the Home Secretary?—I have the original letter written by Lord Melbourne to my grandfather. It is dated:

13 Dec. 1830. Letter of Lord Melbourne.

"Home Office, 13th December 1830. "My Lord,—I beg leave to acknowledge that I have received from your Lordship a "petition to His Majesty, and also two

Mr. *Walpole*—continued.

"copies of a work entitled, 'A Review of "the Case of Lord Cochrane,' one of which "your Lordship wishes to be humbly sub- "mitted to His Majesty, together with "your petition, and the other intended for "my perusal; I have the honour of acquaint- "ing your Lordship that I shall take the "earliest opportunity of laying before His "Majesty your Lordship's petition, and also "the book by which it is accompanied; "and I have, &c. *Melbourne.*"

83. Lord Melbourne refers to a book which accompanied the petition; have you that book?—I have (*producing it*).

84. What is it called?—"Review of the Case "of Lord Cochrane."

85. You put that in evidence as the book referred to by Lord Melbourne?—I do.

86. Do you know who it was drawn up by?—I do not know for certain who it was drawn up by.

87. In your evidence on the last occasion on which the Committee met, you stated that you had no answer to that memorial of 1830; have you found among your grandfather's papers an official document signed by Lord Melbourne, which is an answer to that application?—I have (*producing it*).

88. Will you read it?—

18 Dec. 1830. Official letter of Lord Melbourne.

"Whitehall, 18th December 1830. My "Lord,—I have not failed to lay before the "King your Lordship's letter of the 10th "December, soliciting His Majesty to re- "store your Lordship to your rank and "station in the Royal Navy, and I have to "inform your Lordship that His Majesty "has returned your letter to me, but has "not been pleased to signify any commands. "I have, &c. *Melbourne.*"

89. That finally concluded the application in 1830?—It did.

90. Have you a letter to your grandfather from

Hon. Lord *Cochrane.*

12 June 1877.

Mr. *Walpole*—continued.

from the late Lord Grey, the Prime Minister at the time, dated the 12th December 1830?—Yes (*producing it*).

91. Was that letter written with reference to the memorial presented to the Government in 1830?—Yes.

92. Will you read it?—

12 Dec. 1830. Letter of Lord Grey.

"Berkeley-square, 12th December 1830.
"My Lord,—I have to acknowledge the receipt of your Lordship's letter of the 9th. "Your petition to His Majesty will of course "be forwarded through the usual channel. "I need not say that it would give me "great satisfaction if it should be found possible to comply with its prayer. This "opinion I expressed some years ago in a "letter which I believe was communicated "to you, and which I wrote at the desire of "Sir R. Wilson. To the sentiments expressed in that letter I refer, which if I "remember right, though they might not go "to the extent of saying that you appeared "totally unconnected with the fact, proved "on the trial, acquitted you of all blame "except such as might have been incurred "by inadvertence, and by having suffered "yourself to be led by others into measures, "of the consequence of which you were not "sufficiently aware. I remain, &c., *Grey*."

93. Have you any other letter with reference to the application in 1830 from or to a Minister?—No, with the exception of those I have shown, and a letter of Lord Auckland, dated 7th December 1830.

94. To go to 1842, in your former evidence, you stated that in 1842 Lord Dundonald applied for the restoration of the Order of the Bath which was refused by the Government through Lord Haddington; have you looked for a copy of that refusal?—I have.

95. Have you found it?—No, I have not been able to find it.

96. You stated in your former evidence that the next application was made in 1844?—It was.

97. That application was made to Sir Robert Peel, who was then Prime Minister?—Yes.

98. Have you found among your grandfather's papers the draft of that application?—Yes (*producing it*).

99. Will you read it?—

Application to Sir Robert Peel in 1844.

"To Sir Robert Peel.—Sir, I respectfully beg leave to submit to the consideration of Her Majesty's Government a "memorial, praying a revisal of the verdict pronounced against me in 1814. I "have never ceased to complain of the "great wrong and injury which I have "sustained, and do continue to sustain, from "that verdict; and that I have not complained without reason will, I trust, appear as well from the contents of my memorial itself, as from a more general statement, which I also beg leave to lay before you. I cannot impart to any other "mind that perfect certainty of my entire "innocence, which is, and can only be peculiar to my own (and which for upwards "of 30 years has enabled me to exist "under imputations which, if enforced by "truth, I could not have borne for so many

Mr. *Walpole*—continued.

"days), but I do feel full confidence that no "man can read and duly consider the memorial and statement which I have now the "honour to lay before you, together with "my previous statements therein referred "to, and then conscientiously say that I had "a fair trial, or that no injustice was done "me in refusing me a new trial, or that "the length of time which has elapsed, "is a just reason wherefore the verdict "should not now be disturbed, rather than "a reason why it should, with all its remaining consequences, be immediately "done away. For the measure of justice "afforded me by His late Majesty in replacing me in my position in the Navy, I felt "grateful, even while I was under the "impression that his declining to restore my "other honours at the same time, implied a "desire that they should never be conceded; "but I have been assured by his then "Chancellor, that His Majesty distinctly "intimated that his objection was not prospective, and that he expected the time "would arrive when I should be fully "reinstated. If, therefore, neither lapse of "time nor regard to the pleasure of the late "King can be any hindrance, but the contrary to the removal of the remaining consequences of the verdict against me, I "feel that it is not from Her present Most "Gracious Majesty, and I believe, sir, it is "not from you, nor from that administration "of which you are the head, that I shall "experience a final denial of that investigation which I solicit, nor of whatever "amount of redress or justice may be found "due to me, should the result of such investigation prove in accordance with the "judgment of my counsel at the trial, who "were clearly of opinion (as I am authorised to state) that the verdict as against "me was erroneous."

100. Did your grandfather receive an answer to that memorial?—He did.

101. Was it in Sir Robert Peel's own handwriting?—Yes.

102. Have you that letter?—Yes (*producing it*).

103. Will you read it?—

7 Nov. 1844. Sir Robert Peel's answer.

"Whitehall, 7th November 1844. My "Lord,—Her Majesty's servants have had "under their consideration the letter which "I received from your Lordship, bearing "date the 10th September 1844, together "with the document by which that letter "was accompanied. On reference to the "proceedings which were adopted in the "year 1832, it appears that previously to "the restoration of your Lordship to your "rank in the Navy, a free pardon under the "Great Seal was granted to your Lordship, and, adverting to that circumstance, "and to the fact that 30 years have now "elapsed since the charges to which the "free pardon had reference, were the subject of investigation before the proper "judicial tribunal of the country, Her Majesty's servants cannot, consistently with "their sense of public duty advise the "Queen to re-open an inquiry into those "charges.

Mr. *Walpole*—continued.

" charges. I beg leave to refer your Lord-
" ship to the letter which the Earl of Had-
" dington, the First Lord of the Admiralty,
" addressed to your Lordship in the year
" 1842, as I am not enabled to make any
" communication to your Lordship on the
" part of Her Majesty's Government diffe-
" ring in its purport from that letter. I
" have, &c., *Robert Peel.*"

Mr. *Marten.*

104. In your Answer No. 28, you state that:

" In 1844 Lord Dundonald again applied
" for a restoration of the Order of the
" Bath through Sir Robert Peel, and was
" again refused."

At that time you had not got Sir Robert Peel's letter, nor the draft of the application that was made. The draft application which you now produce contains the whole application which was then made, and it apparently relates to a revisal of the sentence, and not to a restoration of the honour?—I fancy that the letter as to the restoration of the honour was the accompanying letter.

105. That you have not found?—No, but such a letter was sent, I think. A more direct application for the restoration of the Order of the Bath was made in the accompanying letter.

Mr. *Walpole.*

106. In that application made in 1844, your grandfather refers to a statement made to him by the then Lord Chancellor, Lord Brougham?—Yes.

107. Have you the letter of Lord Brougham in which that statement is contained?—I have (*producing it*).

108. Will you read it?—

29 Mar. 1844.

" Green-street, 29th March 1844. My
" dear Lord Dundonald,—I think upon the
" whole that the time is favourable. I have
" well considered the matter as of import-
" ance, and I have read the papers through.
" I do not think the best way of bringing
" the subject before the Duke is to send
" that correspondence, but rather to make
" a statement, and I authorise you distinctly
" to add to it these two material facts;
" first, that William the Fourth only ob-
" jected to the Bath being restored at the
" same time with your rank, and not abso-
" lutely and at all times; secondly, that
" your counsel were clearly of opinion the
" verdict, as concerned you, was erroneous,
" and I always considered that you had
" sacrificed yourself out of delicacy towards
" your uncle, the person really guilty.
" The restoring your rank, without your
" honours, is too absurd and unfair. It
" means 'we will take all we can get from
" you in services, and give you nothing.'
" Yours, &c., *H. Brougham.*"

Mr. *Russell Gurney.*

109. Can you give us the dates of your grandfather's foreign service between 1814, when your grandfather's name was struck off the list of Captains in the Royal Navy, and 1832, when he was restored?—He landed at Valparaiso, in

Mr. *Russell Gurney*—continued.

Chili, on the 28th of November 1818, and a few days after he took the command of the Chilian and Peruvian squadron. He hauled down his flag at Valparaiso on the 18th of January 1823, on the conclusion of the War of Independence. I have not the exact dates of his commissions. He took service in Brazil on the 3rd of April 1823, and he left the Brazilian Service on the 7th of November 1825, on the termination of the War of Independence; he arrived in Greece in March 1827; he returned to England and France in January 1828; to France he returned in order to see about some steam boats for the Greek Service; he afterwards returned to Greece, and finally left Paros, in Greece, on the 20th of December 1828.

110. During that time he had remained in their service?—I cannot say whether he was in the Greek Service the whole of that time, but he actively commanded the Greek Squadron from March 1827 to January 1828, and he afterwards returned to Greece in order to assist them as an admiral, I fancy.

111. Was he in the battle of Navarino?—He was not.

Mr. *Butt.*

112. Have you any documents relating to a discovery of Lord Dundonald, the secret of which he refused to disclose for the use of any foreign State?—Yes, I have here a letter from my grandfather to Lord Haddington about that secret plan of carrying on war.

113. What is the date of that letter?—23rd of January 1842.

114. Will you read it?

" My Lord,—If, at any time, your Lord-
" ship shall desire an explanation of my
" plans for deciding, at once, the question
" of maritime superiority, which I communi-
" cated to His Royal Highness the Prince
" Regent in the year 1811, and which His
" Royal Highness referred to a Secret Com-
" mittee, consisting of the late Duke of
" York, Lord Keith, Lord Exmouth, and the
" two Congreves, who gave their opinion
" that under the circumstances detailed in
" my explanatory paper, their powers were
" irresistible; adding, however, an observa-
" tion that, in certain cases, these plans, if
" divulged, might prove perilous to our
" colonial possessions; whereupon the
" Prince Regent sent for me to Carlton
" House, and commanded secrecy also on my
" part. This, my Lord, I have maintained,
" not only during the lifetime of His Royal
" Highness, but throughout a long period of
" service abroad (where I might have used
" them to great personal advantage), for the
" subject has always appeared to me of such
" vast importance that I have never felt
" myself at liberty to use or divulge it
" unless for the service of my country.
" Lately, when it seemed question of a
" French war, or of an American war, or of
" both, Lord Minto had my permission to
" lay these plans before the Duke of Wel-
" lington, as the most competent of all judges
" in military affairs, and it was with much
" pleasure that I learnt from his Lordship
" the sententious observation of that great

Hon. Lord *Cochrane*.

12 June 1877.

Mr. *Butt*—continued.

"authority that 'two could play at that "game,' which, of course, implied when "they both understood it. One party, however, alone being aware of its nature, I will "venture to say that a hundred millions "sterling employed in war, never yet effected "the ruin of our maritime opponents so "effectually as this new, simple, and yet "secret means is capable in one day, or in "one night, to accomplish; that, too, in despite "of all the formidable defences of ports "and roadsteads. I am, &c., *Dundonald*."

Memorial of 1846.

115. Is there any answer to that?—No.

Then I have here the memorial to the Queen:—

"To Her Most Gracious Majesty the "Queen, the petition of Thomas Earl of "Dundonald, Admiral of the Blue, humbly "sheweth, That your Majesty's petitioner, "in the year 1811, made a discovery of "means of war and national defence, more "important in his estimation than the invention of gunpowder, and calculated to "supersede the military art of Vauban and "the naval tactics of Clerk. That the claim "of the said discovery to be deemed of the "highest importance does not rest on the "petitioner's own estimation thereof; for "in April 1812 His Royal Highness the "Prince Regent (afterwards King George "the Fourth), to whose consideration your "Majesty's petitioner had humbly submitted "it, was pleased to refer it to a Secret Commission, consisting of His Royal Highness "the Duke of York, Admirals Lord Keith "and Lord Exmouth, and General and "Colonel Congreve, whose report (shown "to the petitioner by the said Lord Keith) "fully acknowledged the reality and magnitude of the discovery, and pronounced "the means irresistible, and their application "infallible under the circumstances by the "petitioner set forth. That His Royal "Highness thus assured of the importance "of the discovery, was pleased to send for "your Majesty's petitioner, and to enjoin "him not to disclose or divulge a secret of "such momentous import. That your "Majesty's petitioner, during his subsequent "employment as commander of the naval "forces of Chili and Peru, and of the "Emperor of Brazil, had numerous opportunities of destroying the opposing forces "of the enemies of those states by means of "his said discovery. Nevertheless your "Majesty's petitioner did not fail to respect "the injunction of His Royal Highness the "Prince Regent, and steadily determined "that such means of war should never be "employed by him or with his consent, "except for the benefit or defence of his "country. That Your Majesty's petitioner "having now for the space of 40 years "reserved the secret of his said discovery, "save as confidentially communicated to "illustrious and distinguished Members of "Administrations at times when it appeared "to your Majesty's petitioner that hostilities "were threatened, and being deeply impressed at the present eventful period with "the conviction of its being of the highest "importance that the existence and availableness of such infallible means and

Mr. *Butt*—continued.

"method of national protection should be "recognised; whereby the expenditure of "millions on stationary fortifications, and "other uncertain means of defence (and, "perhaps, eventually of hundreds of millions "in protracted war), may be avoided. Your "Majesty's petitioner humbly prays Your "Most Gracious Majesty to command that "a Select Commission of distinguished persons, military, naval, and scientific, be "appointed to investigate and report on the "means of war discovered by Your Majesty's petitioner, and his plans for applying them with irresistible effect to national "protection. And in the event of his said "plans failing to appear to such Select Commission as they have ever appeared to "Your Majesty's petitioner, and should be "by them considered as inefficient or inexpedient, that then Your Majesty's "petitioner may, for his own justification, "receive the sanction of Your Most Gracious "Majesty to hold himself exonerated from "further obligation to secrecy."

116. What answer was given to that?—It was referred to a Secret Committee, a Committee of the Ordnance Office.

117. What is the date of that?—There is no date to the petition.

Mr. *Russell Gurney*.

118. Have you any way of fixing the date?—I have the means of fixing about the date. I think January 1847, was the date of the Committee.

Mr. *Butt*.

119. Have you the report of the Secret Commission referred to in that memorial, consisting of the Duke of York and others?—I have the original coprespondence, but not here.

120. That Secret Committee sat in 1811?—Yes; I have all the letters connected with it.

121. Have you the report of the Committee of 1847?—Yes (*producing it*).

122. Will you read it?—

16 Jan. 1847. Report of Committee on Secret War Plans.

"Secret and Confidential. Ordnance "Office, 16th January 1847. My Lord,—In "conformity with your Lordship's instructions, we, the undersigned, have met to "consider a report on the secret war plans "of Vice Admiral the Earl of Dundonald, "transmitted to us by the First Lord of "the Admiralty, the Earl of Auckland. "These plans may be classed under three "heads; first, one, on which an opinion may "be formed without experiment, for concealing or masking offensive warlike operations, and we consider that, under many "particular circumstances, this method of "his Lordship might be made available, as "well by land as by sea, and we therefore "suggest that a record of this part of Lord "Dundonald's plans should be deposited with "the Admiralty, to be made use of, whenever, in the judgment of their Lordships, "the opportunity for employing it may "occur; second, one, on which experiment "would be required before a satisfactory "conclusion could be arrived at; third, "Nos. 1 and 2 combined for the purpose of "hostile operations. After mature consideration, we have resolved that it is not desirable

Mr. *Butt*—continued.

" desirable that any experiments should be " made. We assume it to be possible that " the plan No. 2 contains power for producing " the sweeping destruction the inventor " ascribes to it, but it is clear this power " could not be retained exclusively by this " country, because its first employment would " develope both its principle and application; the last observation applies equally " to plan No. 1. We considered, in the next " place, how far the adoption of the proposed " secret plans would accord with the feelings and principles of civilised warfare, we " are unanimously of opinion that plans " Nos. 2 and 3 would not do so. We, " therefore, recommend that, as hitherto, " plans Nos. 2 and 3 should remain concealed. We feel that great credit is due to " Lord Dundonald for the right feeling " which prompted him not to disclose his " secret plans when serving in war as a " naval commander in chief of the forces of " other nations, and under many trying circumstances, in the conviction that these " plans might eventually be of the highest " importance to his own country. We have " only to add, that we have sealed up, under " one cover, all the papers which have been " submitted to our consideration by the First " Lord of the Admiralty and the Earl of " Dundonald, and our correspondence with " the latter in another, both of which we have " marked secret. With regard to the disposal " and future custody of all these papers we " await instructions from your Lordship or " the Earl of Auckland, to whom we propose " this letter should, after your Lordship has " perused it, be transmitted. We have, &c., " *Thomas Hastings*, Captain, R.N., and " Principal Storekeeper, *J. F. Burgoyne*, " *J. P. Colquhoun*, Lieutenant-Colonel, Royal " Artillery."

123. That report was communicated to Lord Dundonald?—It was.

124. After that Secret Committee made their report, which appears to have been in 1847, did Lord Dundonald ever again make any attempt to have his invention used?—He did, by an application to Lord Palmerston.

125. At what time was that?—During the Crimean War.

126. Have you any papers referring to that?—It was referred to a Secret Committee consisting of Mr. Lyon Playfair and the late " Master of the Mint," Professor Graham.

127. Have you the report of that Committee?—I have not the report of that Committee. I have always understood that they considered the plan a valuable one, but that one part of it was more generally applicable than the other.

128. Have you any letter referring to it?—I have a letter from Lord Palmerston on the subject of the secret plans, dated 6th April 1855.

Letter of Lord Palmerston on Secret War Plans.

129. Will you read it?—

" 144, Piccadilly, 6th April 1855. My " dear Lord,—I have been unwilling to " come to any conclusion upon a plan proposed by an officer of so much science and " experience and so distinguished as yourself, " without full consideration and consultation with my colleagues. After much " reflection, and after due attention to the

Mr. *Butt*—continued.

" report of those persons to whom at a former time the plan was referred, we have " come to the opinion that in the present " state of things in the Baltic, and with the " obstructions of various kinds which the " Russians have opposed to the near approach " of a hostile fleet to Cronstadt, the plan of " operations which you propose would not " be applicable in the Baltic. It is, however, possible that your system might be " available in aid of the operations now " going on by land against Sebastopol. " But for its practical execution there " must be some persons who thoroughly " understand the principle on which it is " founded, and the manner of carrying it " into effect. If we were simply to send " out to the General Commanding in Chief " in the Crimea instructions to employ some " officer to carry your plan into effect, the " plan would probably fail for want of a " proper comprehension on the part of the " persons appointed to execute it. The " question then is, could you select any " intelligent person whom you could instruct " sufficiently to feel confident that he would " be trusted to execute your plan, or if the " Government were to select one or two intelligent engineer officers and place them " in communication with you, could you so " fully put them in possession of your views " as to enable them to carry them out in " practice. The plan might, in the first " instance, be tried on a small scale, and " if successful, it might be more extensively " applied. But it is obviously in its nature " a plan, which, if tried at once on a large " scale, and from any cause not succeeding, " would be liable to much criticism. My " dear Lord, Yours, &c., *Palmerston*."

I can state that my grandfather refused to try the plan unless the experiment was undertaken by himself or his son, Admiral Cochrane. The Government wished that an engineer officer should undertake the experiments, but my grandfather would not allow it. He was willing that it should be carried out under the direction of his own son or himself, but under no other direction.

130. Admiral Cochrane was your uncle, not your father?—Yes.

Mr. *Marten.*

131. You were asked as to the date of Lord Dundonald's will; can you give it now?—It is dated 16th August 1860.

132. In what part of the year 1860 did he die?—In October.

133. What was his age at the time of his death?—He was 84.

Mr. *Sackville.*

134. With reference to Lord Dundonald's foreign services, have you any knowledge of what pecuniary rewards he received from foreign governments?—For his service in South America he obtained nothing during his life, for this reason, as he states himself, on his return to England in 1825, after the termination of his service in Brazil, he found himself involved in litigation on account of the seizure of neutral vessels by the authority of the then unacknowledged Government of Chili. That litigation cost him upwards of 14,000 *l.*, and indirectly more than

Hon. Lord *Cochrane.*

12 June 1877.

Mr. *Sackville*—continued.

double that amount, for in order to meet the expenses he was compelled to sell his property at a great sacrifice, amongst which the loss arising from the sale of his house and residence in Regent's Park alone was upwards of 6,000 *l.* "So," to quote my grandfather's own words, "in "place of receiving anything from my efforts in "the cause of Chilian and Peruvian independence, "I was a loser of upwards of 25,000 *l.*, and I had "therefore to sacrifice all I afterwards earned in "Brazil to satisfy claims arising from seizures "made under the authority of the Chilian Govern-"ment." They made him personally liable for detention of neutrals. My grandfather left my father and my uncles whatever sum of money might be recovered from Brazil for his services; he thought they would acknowledge his services in that way some day or other, and two years ago the Government of Brazil paid them a sum of money.

135. After your grandfather's death?—Yes, two years ago the Brazilians granted my father and his brothers the reward which they had so long held back for my grandfather's services in Brazil; 50 years after the services were rendered.

136. Lord Dundonald did not get much reward from the Greek Government, I suppose?—He agreed to forego 20,000 *l.* of what they were to pay him, for the purpose, I believe, of building a hospital. He received from the Greeks a large sum of money, the greater part of which he invested in aiding their cause; but from South America the only reward that has been received at all is this sum which was paid two years ago.

Mr. *Holms.*

137. What was the amount of that sum?—£. 38,600 was the amount remitted to England.

Mr. *O'Byrne.*

138. Was that on account of pay?—On account of services.

139. Including the question of pay?—Yes, it included everything.

Mr. *Walpole.*

140. You consider from what you have heard and seen of this part of the case, that your grandfather sustained losses in the way you have explained to the amount of 25,000 *l.*?—I quoted his own words, in which he said that he was a loser of upwards of 25,000 *l.*

141. Since that the 38,600 *l.*, to which you have referred, has been paid?—Yes, he left my father and my uncles whatever money might be due for his services in Brazil, and the Brazilians paid that two years ago.

142. You consider that the balance he has received, putting the losses on the one side, and the money paid since his death on the other, would be the difference between 25,000 *l.* and the 38,600 *l.*?—No, because the 38,000 *l.* was not paid till after his death.

Mr. *Holms.*

143. That is to say he himself lost 25,000 *l.*, whereas the 38,000 *l.* was paid to his heirs?—That was paid to his heirs, but by his efforts in Brazil, Chili, and Peru, he was not a penny the better during his lifetime; in fact he was worse, because he had to part with property to

Mr. *Holms*—continued.

pay for the losses incurred by the neutral vessels, also by aiding them by ships of war, and other assistance.

Mr. *Butt.*

144. You are aware, I suppose, that Lord Dundonald always imputed the delay or the refusal of the Brazilian Government to recognise his claim to the denial of justice to him by the English Government?—He did.

145. He says this:—

> "Those States (that is to say, Brazil and "Chili) were not ashamed to offer me the "command of their squadrons, and to receive "from me as essential services as ever were "rendered by any individual to any state "or nation. Neither are they ashamed, after "giving me thanks and honorary marks of "distinction, to avail themselves of the "stigma cast on my character by that un-"founded verdict, and of that want of support "from my own Government which its refusal "to revise that verdict indicates, in order "to commit the injustice of disputing and "denying my claims and breaking their en-"gagements with me."

You are aware that Lord Dundonald has written that?—Yes.

146. Do you know whether those Governments ever gave that reason. He says,—

> "The fraud imputed to me is the basis of "their excuse and encouragement for the "commission of the real and flagrant fraud "of cheating me out of the stipulated reward "for my services?"

—That is the fact, knowing that he would receive no sympathy at home; they refused to pay him for his services.

Mr. *Baxter.*

147. Could you put in documents proving that?—I could put in my grandfather's own words.

Mr. *Butt.*

148. Are you able to say whether Lord Dundonald stated that such reason had been ever assigned by the Brazilian Government or the Chilian Government?—No, I never heard of his stating that they had officially assigned such a reason.

149. His belief was that they were encouraged to refuse payment of his claim by the action of his own Government?—Yes, that is his published belief.

Mr. *O'Byrne.*

150. I presume he had grounds for believing that?—Yes, he had grounds for believing it. With reference to the statement in the report of the Secret Committee of 16th January 1847, that my grandfather had reserved the secret plan for his country under many trying circumstances, I may say that those trying circumstances were these. An immense sum of money and plate had been taken from the capital of Lima by the Spanish Royalists and deposited in the castles of Callao for safety. Those castles would have been particularly accessible to my grandfather if he could have been induced to bring his secret plan to bear upon them, and he states in his book that his not bring-

ing

Mr. *O'Byrne*—continued.

ing that plan to bear upon them was a source of great disgust to the Chilians, whom he commanded; and he says that the ministers of the country told him that they had a right to all his knowledge when they employed him, and not a portion of it. He states that within 24 hours, if he had adopted his secret plans, the whole of that plate and silver might have come into the possession of the squadron, and of course a very large portion of it would have gone to himself.

Hon. Lord *Cochrane.*

12 June 1877.

Mr. *Holms.*

151. Were those secret plans ever developed afterwards, so that the real value of it might be ascertained?—They are still a secret.

Mr. T. B. Branwell, called in; and Examined.

Mr. *Branwell.*

Chairman.

152. In the petitioner's case, at page 4, the petitioner refers to the case of Sir Robert Wilson and says:—

"That officer, who had been dismissed "from his position as a general officer, was, "in 1830, restored to the service, his com- "mission stating that his rank was to be "considered as bearing date from 27th May "1825. In August 1832, Sir Robert Wilson "claimed the pay of a general officer from "27th May 1825, and on 28th October 1832, "the Secretary at War addressed a letter to "Her Majesty's Treasury recommending "Sir Robert Wilson's claim of pay as a "special case, in the view that the act of "Royal favour should be considered to "extend to pay as well as to rank. This "letter was acted on, and the pay in ques- "tion allowed by order of his Majesty's "Treasury."

Can you give the Committee the documents referring to that case?—Yes. I have written a prècis of the case, which I will read:—

"Sir Robert Wilson was removed from "the army on 15 September 1821, His Ma- "jesty having no further occasion for his "services.—*J. B. B.*, 16 June 1872. After "a lapse of years, Sir Robert's claim to be "reinstated in the British Army was recon- "sidered, and finally determined upon in his "favour by replacing him upon the list of "unattached generals for 22nd July 1830, "with antedate 27th May 1825, that being "the date it was calculated he would have "attained such rank had he never been re- "moved from the service. At that time he "did not ask for any pay.

"In 1833 Sir Robert applied for the "arrears of back pay from the 27th May "1825, the date of his commission, but made "no claim for pay from 1821 to the last- "mentioned period. For the delay in not "making his claim at an earlier date for the "back pay was the consequence of many "intervening considerations, but having "heard of an officer who had been restored "to the service and allowed his arrears of "pay, encouraged him to hope that his claim "would be favourably entertained..

"From a minute of Mr. Sullivan, the "Deputy Secretary of War, it appears the "precedent on which Sir Robert relied upon "was that of Major Bristow."

The papers connected with Major Bristow's case I am sorry to say we are not able to find.

153. Is there no means of getting them in any other office?—I will inquire again when I go back to the office. It would appear, however, that the case of Major Bristow was not considered to be analogous to that of Sir Robert Wilson, as the decision in the case of Major Bristow was grounded on the conviction that he did not do the act which had been attributed to him, and for which he had been suspended. On a reconsideration of the case, the Government considered that he had been convicted for an act which he had not committed.

Chairman—continued.

Mr. *Walpole.*

154. How does that appear?—It appears by a minute by the Deputy Secretary of War, which I will come to presently. If you will allow me, I will first finish reading this prècis which I have prepared.

"On Mr. Sullivan personally represent- "ing Sir Robert's claim to the Chancellor of "the Exchequer, he informed him that the "Government had no intention whatever of "allowing pay; that they considered the "restoration to be an act of grace, and to "give the pay would be an admission that "the removal was wrong, which they would "not admit. Sir John C. Hobhouse, how- "ever, had the case officially laid before the "Treasury, stating that, while the office "practice would not bear out Sir Robert's "view that the date of the Commission "carried with it the pay of the rank, yet, on "the other hand, he could not say that the "precedents decidedly negatived the claim. "He, therefore, taking into consideration "the distinguished services of Sir Robert "Wilson, and the great pecuniary loss he "had already suffered by being deprived of "his pay from 1821 (the date of his removal "from the service) to 1825 (the date of his "restoration), strongly recommended their "Lordships to favourably consider the ap- "plication. Sir John Cam Hobhouse's letter "was afterwards supported by Lord Hill, "the Commander in Chief; and the "Treasury approved of all arrears of pay "from 27th May 1825, to 22nd July 1833, "being paid to the officer."

155. That is a short summary of the facts of that case?—Yes.

156. Will you now give the particulars of that summary *seriatim*?—I have here the office memorandum, dated 30th October 1830:

"Most humbly submitted to your Majesty 30 Oct. 1830. "that Lieutenant General Sir Richard "Thomas Wilson be replaced upon the list "of unattached general officers from the "22nd July 1830. War Office, 30th Oc- "tober 1830."

157. Have

Mr. *Brannvell.*

12 June 1877.

Mr. *Walpole*—continued.

157. Have you the application upon which that was made?—No. The indorsement in that is "F. P. 122,722. Sent to Deputy Secretary of War, 17/9/30." Where they are I have no means of knowing.

158. What is the next document which you have?—A letter from Sir Robert Wilson applying for arrears of pay, dated 27, Chapel-street, Grosvenor-square, 22nd August 1832:

22 Aug. 1832.

"Sir, I have the honour to address myself "to you on the subject of a claim of pay "that attaches to the rank of Lieutenant "General, which I have held under His "Majesty's favour since the 27th May 1825, "as the commission enclosed certifies. No "warrant has yet been issued for any pay "antecedent to the 23rd July 1830; the "day on which that commission was directed "to be placed in my hands, but as no mention "is made, or has at any time been made, "that the pay was to be separated from the "rank and withheld, and not having any "reason to believe that such was His Majesty's intention, although, from a variety "of intervening considerations, I have not "heretofore applied by memorial for the "same; I have always presumed that the "pay would be graciously granted, and I "am more encouraged in that expectation "and hope, as I find precedents established "for the restoration of arrear pay to officers "whose service had been suspended during "His Majesty's pleasure. I beg therefore, "Sir, to submit my pretentions for your "kind consideration, and to express a confidence that you will see sufficient ground "to direct the issue of the pay from the day "specified in the commission. I have, &c., "*R. W. Wilson,* Lieutenant General."

159. What was done upon that letter?—Mr. Sullivan, who was Deputy Secretary of War at the time, in submitting the paper to Sir John Cam Hobhouse, says:

26 Aug. 1832.

"Secretary at War,—This probably arises "out of a knowledge of what has been done "for Major Bristow." There is no quotation of any papers. "The Secretary "at War knows the two cases sufficiently "to make it quite unnecessary for me to "detail in what they differ, but I may remark that the course which has been "followed with Bristow is, I presume, "grounded on a conviction that he did "not do the act which was attributed to "him. The restoration of Sir Robert Wilson was the act of the Duke of Wellington's Ministry; it was arranged just before Sir H. Hardinge went out of the War "Office. The question of back pay was "started before Lord Francis submitted "the memorandum of 30th October" (who Lord Francis was I do not know). "He "sent me to the Chancellor of the Exchequer, who told me 'that the Government "'had no intention whatever of allowing "'pay; that they considered the restoration "'to be an act of grace, but that the grant "'of pay would amount to an admission that "'the removal was wrong, which they by "'no means held to be the fact.'"

That is dated 26th of August 1832; that, I presume was the answer that Mr. Sullivan had received from the Chancellor of the Exchequer sometime before, when the case of back pay had been submitted through Lord Francis.

160. What is there given in inverted commas was the answer given by the Treasury?—The answer given to Mr. Sullivan personally.

161. The Duke of Wellington being First Lord at that time?—Yes; it was in the Duke of Wellington's Ministry.

Chairman.

162. What is the next letter?—Upon that Sir John Cam Hobhouse wrote this letter to the Honourable James Stewart, who was one of the Lords of the Treasury:

8 Oct. 1832.

"War Office, 8th October 1832. Sir,—I have the honour of transmitting to you, "for the consideration of the Lords Commissioners of His Majesty's Treasury, a "memorial which I have received from "Lieutenant General Sir Robert Wilson. "Their Lordships will perceive that Sir "Robert Wilson claims the pay of a general "officer from the time from which his commission states his rank is to be considered "as bearing date; that is to say, from 27th "May 1825. It will be observed that Sir "Robert makes no claim for pay from 1821 "to the last-mentioned period during what "time he regards himself as having been "altogether out of the surface. The inference naturally is, that in his view of "the case, if he is to rank as lieutenant "general since 1825, he ought also to be "paid as a general officer from that time; "in other words, that the commission which "is enclosed, as it gives him the rank as "soon as he could obtain it in the course "of service, confers on him naturally the "usual emoluments attached to that rank. "I do not find that the practice of the War "Office can be said to bear out this view "of the question; nor on the other hand "are our precedents such as to decidedly "negative the claim. I think myself therefore justified in recommending this as a "special case for their Lordships' consideration, and I hope I may be excused for "adding that in my opinion the act of "Royal favour which restored Sir Robert "Wilson to the rank that he could have "held had he never been dismissed the service, may fairly be interpreted to extend "to pay as well as rank. Should their "Lordships balance between this and the "other view of the claim, they may, perhaps, permit themselves to incline to the "favourable side of the question, by recollecting the signal services of this gallant "officer, hitherto unrewarded by the usual "recompenses of military merits; and also "by adverting to the fact that even should "their Lordships grant this request, he will "still have suffered a considerable pecuniary "penalty by the loss of pay from 1821 to "1825, although no military has tried or "given judgment upon the conduct for "which that penalty was inflicted."

163. Have you the answer to that letter?—I have

Chairman—continued.

have here the answer of the Treasury to that communication of Sir John Cam Hobhouse, dated

16 Nov. 1832. "Treasury Chambers, 16th November "1832. Sir,—Having laid before the Lords "Commissioners of His Majesty's Treasury "your letter of the 8th ultimo, transmitting "a memorial from Lieutenant General Sir "Robert Wilson, on the subject of the date "from which he is to receive his pay as lieu- "tenant general, I am commanded by their "Lordships to acquaint you that they are "disposed to concur in your recommendation "'That the loss of pay to be sustained by "'Lieutenant General Sir Robert Wilson, "'should be limited to the period between "'the years 1821 and 1825, and that he "'should be permitted to receive the pay "'which attaches to the commission granted "'to him by His Majesty from the 25th "'May 1825. But before any final decision "'is made, my Lords are desirous that "'you should take the opinion of the "'General Commanding in Chief. I am, "'&c., *J. Stewart.* (The Secretary at "'War).'"

164. What is the next letter?—Upon that, Sir John Cam Hobhouse wrote to Lord Hill as follows:—

19 Nov. 1832. "War Office, 19th November 1832. My "Lord,—In consequence of a communication "from Lieutenant General Sir Robert Wil- "son, I thought it my duty to recommend "to the Lords Commissioners of the Trea- "sury that the arrear of back pay from the "date of his restored rank of lieutenant "general, should be allowed. You will per- "ceive by the enclosed letter from the "Treasury, that my Lords are inclined to "acquiesce in my recommendations, but "they request, in the first instance, to be "furnished with your Lordships' concur- "rence in this measure. I have, &c., *Hill.*"

In that letter was sent a copy of the Treasury letter.

165–6. Have you the reply of Sir John Hobhouse to that letter from the Treasury of the 16th November; I have it here, and I will read it:—

30 Nov. 1832. "War Office, 30th November 1832. Sir,— "With reference to your letter of the 16th "instant, stating that the Lords Commis- "sioners of the Treasury were disposed to "concur in my recommendation that Sir "Robert Wilson should be allowed his un- "attached pay as a general officer from "27th May 1825, but that before they made "any final decision, they desired to have "the opinion of Lord Hill upon the ques- "tion, I have the honour to acquaint you, "for their Lordships' information, that Lord "Hill has stated in a letter of the 22nd "instant, of which I enclose a copy, that he "concurs entirely in my recommendation. "If, on this communication, their Lordships "should decide in Sir Robert Wilson's "favour, I would propose to include the "arrears of pay in the Army Estimates for "next year. I am, &c., *John Hobhouse.*"

Chairman—continued.

Then there is this docket on it:—

"Immediate. Received, 17th December "1832. Write to the Secretary at War that "as it appears that the General Command- "ing in Chief entirely concurs with the Sec- "retary at War and with this Board in "opinon that Lieutenant General Sir R. "Wilson should be permitted to receive the "pay which belongs to his commission "from the period of its date, my Lords are "pleased to sanction the amount being "included in the Army Estimates for 1833. "*J. S.*"

(whom I take to be Mr. Stewart)?—I have not that letter among my papers.

167. Have you the answer to that letter from Sir John Cam Hobhouse to Lord Hill of the 19th of November 1832, which you have just read?—The following is the answer to it:—

22 Nov. 1832. "Horse Guards, 22nd November 1832. "Sir,—I have had the honour to receive "your letter of the 19th instant, with its "enclosure, from the Treasury, in reply to "your recommendation that the arrear of "back pay should be granted to Lieutenant "General Sir Robert Wilson from the date "of his restored rank of Lieutenant General; "and I do not hesitate to express my con- "currence in the proposed grant, and beg "leave to recommend it to their Lordships' "favourable attention. I have, &c., *Hill.*" Addressed to "The Right Honourable Sir "John Hobhouse, Baronet."

168. Is there any minute upon that letter?—Yes, there is this minute made by the Secretary at War:—

28 Nov. 1832. "I suppose we should communicate this "to the Treasury, and say that the pay will "be estimated in the next Estimates." "Letter to Treasury, sending copy of Lord "Hill's letter, stating that if their Lordships "should finally decide in Sir R. Wilson's "favour, Sir John Hobhouse proposes to "include the arrears of pay in next year's "Estimates."

That is dated 29th November 1832. Then there is an official memorandum, dated the 14th of December 1832, merely saying:

14 Dec. 1832. "Is Sir John Hobhouse aware that we "communicated a copy of Lord Hill's con- "currence, in his recommendation that Sir "R. Wilson should get his arrears, to the "Treasury, and that we have not received "any final sanction from the Treasury to "the grant?"

Mr. *Marten.*

169. Have you the commission?—No.

Chairman.

170. What is the next letter you have?—A letter to the Secretary at War, dated

21 Dec. 1832. "Treasury Chambers, 21st December "1832. Sir,—Having laid before the Lords "Commissioners of His Majesty's Treasury "your letter of the 8th ultimo, trans- "mitting a memorial from Lieutenant

Mr. *Branwell.*

12 June 1877.

Mr. *Branwell.*

12 June 1877.

Chairman—continued.

"General Sir Robert Wilson, on the subject "of the date from which he is to receive "his pay as Lieutenant General, I am "commanded by their Lordships to ac- "quaint you that they are disposed to con- "cur in your recommendation 'That the "'loss of pay to be sustained by Lieutenant "'General Sir Robert Wilson should be "'limited to the period between the years "'1821 and 1825, and that he should be "'permitted to receive the pay which "'attaches to the Commission granted to "'him by His Majesty from the 25th May "'1825; but before any final decision is "'made my Lords are desirous that you "'should take the opinion of the General "'Commanding in Chief. I am, &c., "'*J. Stewart.*'"

171. Upon that was a letter written to Sir Robert Wilson?—Yes, a letter was written to Lieutenant Sir Robert Wilson to the following effect:—

5 Jan. 1833.

"With reference to my letter of the 21st "ultimo, apprising you of the opinions given "to the Treasury by Lord Hill and myself "in regard to your claim to unattached "pay from the date of your rank as Lieu- "tenant General, I have now the satisfaction "to acquaint you that I have received a "communication from the Lords Commis- "sioners of the Treasury, conveying their "sanction to my recommendation that you "should be allowed unattached pay at the "rate of 1*l.* 5*s.*, from 27th May 1825 to "22nd July 1830, the date when your "restoration was gazetted. Provision will "accordingly be made for this charge in the "Estimates of the ensuing year."

That is dated 5th January 1833.

Mr. *Marten.*

172. The recommendation is, that he should be allowed unattached pay; that would be unattached pay in what rank?—As Lieutenant General.

Mr. *Marten*—continued.

Mr. *Sackville.*

173. What was his rank when he was removed from the Army?—Major General.

Mr. *Marten.*

174. As I understand it, when Sir Robert Wilson was restored to the service by the commission, which stated that his rank was to bear date from the 27th of May 1825, he was placed in the corresponding rank to that which he could have obtained it, if he had remained in the Army?—Yes, he was put in between the two officers between whom he stood before he was removed; he was put in between his senior and his junior again.

Chairman.

175. Have you any other letters?—I have merely some letters from the Army agents to the Secretary at War, asking that orders may be given for the payment of Sir Robert Wilson's claim.

Mr. *Marten.*

176. Have you any further information to give the Committee with regard to the grounds on which Sir Robert Wilson was removed from his commission, and the grounds upon which he was restored?—Nothing more than is given in these papers.

Mr. *O'Byrne.*

177. Do you know of any similar cases to those of Sir Robert Wilson and Major Bristow?—No. We had the case of a paymaster who had had some little disagreement with his commanding officer, and who, after having been suspended some time, was reinstated. He was allowed his rank, but he did not get any back pay; in fact, he never asked for it.

Tuesday, 19*th June* 1877.

MEMBERS PRESENT:

Mr. Allsopp.
Sir Robert Anstruther.
Mr. Baxter.
Admiral Egerton.
Mr. Greene.
Mr. Russell Gurney.
Mr. Holms.
Mr. Alfred Marten.
Mr. Sackville.
Mr. Solicitor General.
Mr. Tremayne.
Mr. Walpole.
Mr. Whitbread.

SIR ROBERT ANSTRUTHER, BART., IN THE CHAIR.

Mr. T. B. BRANWELL, re-called; and further Examined.

Mr. *Branwell.* 19 June 1877.

Chairman.

178. HAVE you any further information to give the Committee with regard to Major Bristow?—I have a statement of that case, which has been submitted to the Accountant General, every fact in which statement is given on the authority of documents which I have here. I find that Major Bristow "first entered the army "on 1st May 1805, by purchase of a commission, "as cornet, in the 1st Life Guards; in which "regiment (purchasing each step as lieutenant and "captain) he remained until the 2nd November "1808, when he exchanged into the 11th Regi- "ment of Foot. In that regiment he purchased "his majority on the 20th of January 1814, and "continued to serve until the 27th April 1815, "when he exchanged to half-pay, 38th Foot. "From that regiment he was removed on the 12th "July 1823, by command of his Majesty George "the Fourth. On the 13th September 1830 his "Majesty William the Fourth was graciously "pleased to approve of Henry Bristow, late major "upon half-pay, of the 38th Foot, being restored "to his rank in the army, and he was accordingly "from that date replaced on the half-pay list. "When Major Bristow was removed from the "service on 12th July 1823, in consequence of "having endeavoured to raise men in support of "the Spanish Constitutionalists at the period of "the last French invasion of Spain, it appears "that the Treasury were authorised by Earl Bat- "hurst, Secretary of State in 1826, to grant him "a gift of 1,800 *l.*, being the price of a com- "mission. On his restoration to the service, "Major Bristow was required by the Treasury "to repay the said 1,800 *l.*, and until that was "done their Lordships directed his half-pay to be "suspended. Major Bristow appealed to the "Secretary at War, Sir John C. Hobhouse, for- "warding to him at the same time documents "which convinced Sir John that the officer had "not committed the act for which he had been "punished. Sir John strongly represented the "case to the Treasury for reconsideration, pointing "out to their Lordships that Major Bristow's case "was considered to have been one of great hard- "ship even by the Government which advised his "Majesty to dismiss him, and who three years "afterwards granted him 1,800 *l.*, as an act of com-

Chairman—continued.

"passion. Sir John further showed that unfor- "tunately the King's clemency in restoring Major "Bristow had not a retrospective effect, and that "consequently he was without half-pay from 12th "July 1823 to 21st September 1830, being the in- "terval between dismissal and restoration. Major "Bristow in his appeal prayed that if required to "refund the whole of the 1,800 *l.* he should be "called upon to repay only the difference between "that sum and the amount of his half-pay for the "seven years he was deprived of his commission, "which request Sir John Hobhouse most strongly "supported, as he considered that the restoration "was an act of justice rather than of clemency, "inasmuch as the officer did not do that for which "it had been assumed that he was dismissed the "service. Before the Treasury would however "give a final decision on the matter they requested "that it might be submitted to the Judge Advo- "cate General, with a request that he would give "his opinion as to whether Major Bristow had "infringed the provisions of the Foreign Enlist- "ment Act. Mr. Grant, the Judge Advocate "General, decided that it did not appear to him "that Major Bristow was guilty of any violation "whatever of the Foreign Enlistment Act. This "opinion having been transmitted to the Treasury "their Lordships concurred with the Secretary at "War that under all the circumstances of the case "Major Bristow's restoration to the army should "be considered as an act of justice rather than one "of clemency, and therefore that in the settlement "of the debt of 1,800 *l.* Major Bristow should have "credit for the half-pay which he lost while "deprived of his commission, and be called upon "to pay the difference only between that sum "which he owed to the public, and the amount of "half-pay which was lost to him, when out of the "army. Major Bristow was accordingly required "to pay up 555 *l.* 10 *s.*, being the difference "between the debt of 1,800 *l.*, and 1,244 *l.* 10 *s.*, "the arrears of half-pay for the time referred to "and was granted an extension of time to make "the payment. The debt was met by subsequent "stoppages from his half-pay, and finally satisfied "on 28th August 1839. By being required to "repay only the difference between the original "debt and the half-pay for seven years that he

Mr. *Brannell.*

19 June 1877.

Chairman—continued.

"was out of the service, Major Bristow was "virtually refunded the whole of his half-pay "from the date of his dismissal to that of his "restoration."

Mr. *Walpole.*

179. That statement of yours is taken from the official documents?—Yes. I have the official documents here, which I can refer to if the Committee wish.

Mr. *Marten.*

180. Have you the commission of Sir Robert Wilson?—No, we do not keep commissions.

Mr. *Sackville.*

181. As to the present practice in the War Office, is not it the case that, when an officer's name is reinstated in the list of the army, after having been struck off for any reason, the Order indicates from what date he is to receive pay?—Every case would have to be governed by its merits. The officer would get pay from the date of his restoration, or, as in the case of Sir Robert Wilson, he would get pay from the date of the commission, some years before.

182. If the case of Sir Robert Wilson were to occur again, would not the Order reinstating him in his rank state distinctly whether or not he was to have any back pay?—That is to say, the "Gazette"; it would not be stated in the "Gazette." There would be an official document from the Secretary of State to say what pay he should have.

Mr. *Marten.*

183. Suppose at the present day a case similar to that of Sir Robert Wilson arose, do you understand that the authorities, in considering the case, would consider the whole case, and come to some determination with regard to the time from which the half-pay should commence?—Yes.

184. They would not leave the question to be subsequently raised or discussed?—No.

185. Then supposing there was a restoration, which, on the face of it, named a time for the commencement of the half-pay, you would consider that as final and conclusive?—Yes.

Mr. *Russell Gurney.*

186. Is a different time ever stated for the receipt of half-pay to that from which the commission is to date?—It would be necessary to state the time at which the half-pay is to commence, on the official paper, for the accountant to pass the charge. The accountant would not pass the charge without having the authority of the Secretary of State to show from what date it was to be.

187. Does the official paper always state the day from which the pay is to begin?—Yes, the official document would, but the "Gazette" would not.

Admiral *Egerton.*

188. You would not know what happened in Captain Hobart's case the other day, which must have been an analogous case?—No. That is a case in the Admiralty.

Mr. *Holms.*

189. When Major Bristow had his half-pay given to him from the time he was dismissed, that is to say, from 1823 till 1830, had he his rank restored to him as if he had never left the service?—The date at which he was restored to half-pay was the 13th September 1830; he was restored to half-pay as major, and he held the rank of major when he was dismissed on the 12th of July 1823.

190. Would his name appear in the Army List in 1830 in the same order as if he had never been dismissed from the service?—Yes; Major Bristow always remained on half-pay. He became afterwards brevet lieutenant colonel on the 22nd July 1830, and on the 9th November 1846 he was appointed colonel, and he attained the rank of major general on the 30th June 1854, and he sold out in 1855.

Mr. *Marten.*

191. Have you any information to give the Committee other than that which you have already given as to the grounds upon which Major Bristow was removed, and the grounds upon which he was restored?—No; I have the papers before me, from which I gathered the facts which I have stated.

The Honourable Douglas Mackinnon Baillie Hamilton Lord Cochrane, re-called; and further Examined.

Hon. Lord *Cochrane.*

Mr. *Russell Gurney.*

192. You stated in answer to Questions 137 and 143, that 38,000 *l.* was paid for your grandfather's efforts in Brazil, Chili, and Peru; was anything paid for what was done in Greece?—Yes.

193. What was that amount?—I believe for his whole service in Greece, the amount my grandfather received was 37,000 *l.*, all, or nearly all, of which he expended, I believe, in aid of their cause. I should say that I have always heard that the sum paid two years ago may be said to be the only sum in respect of which the family may be considered to be at all the better for my grandfather's foreign service in any country.

Mr. *Walpole.*

194. Since you were here last have you found any other paper relating to any application which your grandfather made to the Government authorities with reference to this question?—I have a letter to my grandfather from Lord Melville, dated 4th November 1825 (*producing it.*)

195. Will you read it?—

"Melville Castle, Edinburgh, 4th No- Letter of Lord Melville, 4th Nov. 1825.
"vember, 1825. My Lord,—I have to ac-
"knowledge the receipt of your Lordship's
"letter of the 31st ultimo, and can have no
"difficulty in replying to the question stated
"in it, that I do not deem myself at liberty
"to recommend to his Majesty to institute
"the

Mr. *Walpole*—continued.

"the inquiry which you suggest. I am not "aware of any tribunal in this country "which is competent to such an investiga- "tion, and your Lordship must know that "even if the charge could originally have "been brought before a naval court-martial "(which it could not, as the alleged offence "was committed on shore), no such court "could now legally take cognisance of the "matter, and any opinion or sentence they "might pronounce upon it would be null "and void. I apprehend that nothing but a "free pardon from the Crown can now do "away the effect of the verdict and sen- "tence in your Lordship's case; but unless "the Secretary of State and the law officers "of the Crown were satisfied that such "verdict and sentence were unjust and ought "not to have been pronounced, his Majesty "would not be advised to grant a free "pardon. I have, &c., *Melville.*"

196. That letter purports to be an answer to some letter written by your grandfather; have you found a copy of that letter among your grandfather's papers?—I have not been able to find a copy of the letter to which that letter of Lord Melville's is an answer.

197. You have no knowledge of what that letter was except from what appears in Lord Melville's letter?—No.

Mr. *Marten.*

198. What office did Lord Melville hold at that time?—First Lord of the Admiralty.

Mr. *Walpole.*

199. You stated, in your former evidence, that the first application which was made by your grandfather with reference to his case was in the year 1828?—Yes.

200. Then this letter, which you have found since the Committee last met, shows that some application was made to the Admiralty anterior to the year 1828?—It does.

Mr. *Holms.*

201. Did Lord Dundonald ever receive any pecuniary reward for the services he rendered to his country, other than his pay while serving in the Navy?—He did not.

Mr. *Russell Gurney.*

202. Was not there a pension of 300*l.* a year granted him for distinguished services?—Yes.

Mr. *Walpole.*

203. Granted when?—In 1841.

Mr. *Marten.*

204. Have you the document by which the pension was granted?—I have the letter, or a copy of it, but I have not it with me.

205. Were your grandfather's services brought before Parliament, or recognised by the thanks of the House before 1814?—With reference to the Basque Roads, I believe his name was mentioned in the vote of thanks of Parliament.

206. With reference to the pension for distinguished services, was it under the special authority of Parliament that that pension was granted?—No, it was the ordinary good service pension to which his rank entitled him.

REPORT

FROM THE

SELECT COMMITTEE

ON

LORD COCHRANE'S PETITION;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

AND

MINUTES OF EVIDENCE.

Ordered, by The House of Commons, *to be Printed,*
16 *July* 1877.

338.

Under 4 *oz.*

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REPORT

FROM THE

SELECT COMMITTEE

ON

COMMONS;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

AND APPENDIX.

Ordered, by The House of Commons, *to be Printed,*
22 *June* 1877.

282.

Monday, 26th February 1877.

Ordered, THAT a Select Committee be appointed, Six Members to be nominated by the House, and Five by the Committee of Selection, to consider every Report made by the Inclosure Commissioners certifying the expediency of any Provisional Order for the inclosure or regulation of a Common, and presented to the House during the present Session, before a Bill be brought in for the confirmation of such Order.

Ordered, THAT it be an Instruction to the Committee, that they have power, with respect to each such Provisional Order, to inquire and report to the House whether the same should be confirmed by Parliament, and, if so, whether with or without modifications; and, in the event of their being of opinion that the same should not be confirmed except subject to modifications, to report such modifications accordingly, with a view to such Provisional Order being remitted to the Inclosure Commissioners.

Monday, 12th March 1877.

Committee nominated of—

Mr. Sclater-Booth.	Mr. Fawcett.
Sir Charles Dilke.	Mr. Pell.
Sir Walter Barttelot.	Mr. Leveson Gower.

Members nominated by the Committee of Selection, 13 March 1877—

Mr. H. Cowper (Herts).	Sir William Vernon Harcourt.
Mr. C. B. Denison (York, W. R., E. D.)	Lord Henry Scott.
	Mr. Arthur Walsh.

Ordered, THAT the Committee have power to send for Persons, Papers, and Records.

Ordered, THAT Five be the Quorum of the Committee.

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REPORT.

THE SELECT COMMITTEE who were appointed to consider every REPORT made by the INCLOSURE COMMISSIONERS certifying the expediency of any Provisional Order for the Inclosure or Regulation of a COMMON, and presented to the House during the present Session, before a Bill be brought in for the confirmation of such Order, and who were instructed, That they have power, with respect to each such Provisional Order, to inquire and report to the House whether the same should be confirmed by Parliament, and, if so, whether with or without modifications; and, in the event of their being of opinion that the same should not be confirmed, except subject to modifications, to report such modifications accordingly, with a view to such Provisional Order being remitted to the Inclosure Commissioners;——HAVE considered the REPORT of the INCLOSURE COMMISSIONERS recommending the inclosure of BARROWDEN, SOUTH LUFFENHAM, NORTH LUFFENHAM, and RICCALL COMMONS, and have come to the following RESOLUTIONS, which they have agreed to report to the House, together with the Minutes of the Evidence taken before them, and an Appendix.

I. THAT the Committee recommend the Inclosures generally for approval and confirmation by Parliament, subject nevertheless to the following conditions:

1. That the recreation grounds be augmented by not less than two acres in each of the four cases.

2. That the field allotments in Riccall should be increased by 10 acres.

II. That the Committee are also of opinion that in future cases of Provisional Orders the Inclosure Commissioners should supplement or support their recommendations by evidence from disinterested parties, and that the Assistant Commissioners should be specially instructed with that object.

22 *June* 1877.

PROCEEDINGS OF THE COMMITTEE.

Tuesday, 20*th March* 1877.

MEMBERS PRESENT:

Mr. Sclater-Booth.	Mr. H. Cowper.
Mr. C. B. Denison.	Mr. Leveson Gower.
Sir Charles Dilke.	Mr. Walsh.
Mr. Pell.	Sir William Vernon Harcourt.

Mr. SCLATER-BOOTH was called to the Chair.

The Committee deliberated.

[Adjourned till Tuesday, 17th April, at Three o'clock.

Tuesday, 17*th April* 1877.

MEMBERS PRESENT:

Mr. SCLATER-BOOTH in the Chair.

Mr. Pell.	Sir Charles Dilke.
Mr. Arthur Walsh.	Mr. Fawcett.
Sir William Vernon Harcourt.	Mr. C. B. Denison.
Mr. Leveson Gower.	

The Committee deliberated.

[Adjourned till Tuesday, 5th June, at Two o'clock.

Tuesday, 5*th June* 1877.

MEMBERS PRESENT:

Mr. SCLATER-BOOTH in the Chair.

Mr. Leveson Gower.	Mr. C. B. Denison.
Sir Charles Dilke.	Sir William Vernon Harcourt.
Sir Walter Barttelot.	Mr. H. Cowper.
Mr. Pell.	Mr. Fawcett.
Mr. Arthur Walsh.	Lord Henry Scott.

The First Report of the Inclosure Commissioners under the Commons Act, 1876, recommending the inclosure of Barrowden, South Luffenham, North Luffenham, and Riccall Commons, was read.

Mr. *James Caird* and Mr. *George Ridley* were severally examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 12*th June* 1877.

MEMBERS PRESENT:

Mr. SCLATER-BOOTH in the Chair.

Sir Charles Dilke.	Mr. Leveson Gower.
Sir William Vernon Harcourt.	Sir Walter Barttelot.
Mr. Arthur Walsh.	Mr. Pell.
Mr. Fawcett.	Lord Henry Scott.

Mr. *James Caird* was further examined.

Mr. *Charles Wood* was examined.

[Adjourned till Friday next, at Half-past Twelve o'clock.

Friday, 15*th June* 1877.

MEMBERS PRESENT:

Mr. SCLATER-BOOTH in the Chair.

Mr. Arthur Walsh.	Sir Walter Barttelot.
Sir Charles Dilke.	Mr. Fawcett.
Lord Henry Scott.	Mr. Pell.
Sir William Vernon Harcourt.	Mr. H. Cowper.
Mr. Leveson Gower.	

Mr. *Charles Wood* was further examined.

The Committee deliberated.

Motion made, and Question, "That the evidence of local Witnesses now present should be proceeded with as to the expediency of the proposed schemes"—(Sir *William Vernon Harcourt*)—put, and *agreed to*.

Mr. *James Martin* was examined.

[Adjourned till Tuesday next, at Half-past Twelve o'clock.

Tuesday, 19*th June* 1877.

MEMBERS PRESENT:

Mr. SCLATER-BOOTH in the Chair.

Mr. Pell.	Mr. Fawcett.
Mr. C. B. Denison.	Mr. Leveson Gower.
Mr. H. Cowper.	Sir William Vernon Harcourt.
Mr. Arthur Walsh.	Lord Henry Scott.
Sir Walter Barttelot.	Sir Charles Dilke.

Mr. *Richard Thompson*, Mr. *John Coleman*, and Mr. *Jonathan Dunn* were severally examined.

[Adjourned till Friday next, at Two o'clock.

Friday, 22nd June 1877.

MEMBERS PRESENT:

Mr. SCLATER-BOOTH in the Chair.

Mr. Leveson Gower.	Mr. C. B. Denison.
Sir William Vernon Harcourt.	Sir Charles Dilke.
Mr. H. Cowper.	Mr. Pell.
Mr. Fawcett.	Lord Henry Scott.
Sir Walter Barttelot.	

Motion made, and Question proposed, That the Committee recommend the inclosures generally for approval and confirmation by Parliament, subject nevertheless to the following conditions: 1. That the recreation grounds be augmented by not less than two acres in each of the four cases; 2. That the field allotments in Riccall should be increased by 10 acres—(*Sir Walter Barttelot*).

Amendment proposed, to leave out from the word "That" to the end of the question, in order to add the words:—"It does not appear from the evidence laid before your Committee that sufficient care was taken by the Inclosure Commissioners, and the Assistant Commissioner, to obtain evidence in reference to the proposed inclosures from any others except those who, in the event of inclosure, will have the land allotted amongst them in severalty, and who have, therefore, a direct pecuniary interest in promoting the inclosure. Your Committee consider that the Commons Act of last Session (*Vide* Section 10, Sub-section 4, and Section 11, Sub-section 6) renders it incumbent upon the Inclosure Commissioners to require proof of the public benefit arising from inclosure; and it is obvious that in order to do this effectually evidence must be obtained from others than those pecuniarily interested in the proposed inclosure. Your Committee, therefore, recommend that the schemes under their consideration should be referred back to the Inclosure Commissioners for further inquiry.

"Your Committee also consider that this would be the most expedient course to adopt because they have come to the conclusion that the amount of land reserved for recreation ground in Barrowden, South Luffenham, and Riccall, is inadequate, and that in Riccall the garden allotments for the labouring poor are insufficient.

"Your Committee consider that by the Act of last Session, Parliament decided that the policy to be pursued with regard to inclosures was to be fundamentally changed; that whereas up to that time it was deemed desirable (as stated in the preamble of the Act of 1845), to facilitate the inclosure of Commons, the Act of last Session distinctly contemplates that the regulation of Commons, as distinguished from their inclosure, shall be the object to be kept primarily in view by the Inclosure Commissioners. Your Committee, from the evidence laid before them, are of opinion that this change of policy has not been sufficiently regarded by the Commissioners, who have apparently decided, that not even any portion of the large tract of waste of manor proposed to be dealt with, should be regulated instead of inclosed, because strong opinions have been expressed by those who will have this land allotted to them in severalty, that inclosure is to be preferred to regulation. Those who have a direct pecuniary interest in inclosure are so generally likely to prefer that the Commons should be inclosed, rather than regulated, that, if their opinions are to prevail, your Committee consider that the Act of last Session, so far as it is intended to promote the regulation of Commons will become almost entirely inoperative. Your Committee are of opinion, that the Act of last Session, the main purpose of which is to promote the regulation of Commons, cannot reasonably be expected to bring about the results it was intended to produce, if those who are promoting inclosure have reason to believe that an expression of opinion on their part adverse to regulation will secure a decision in favour of inclosure. Many, who are certain to decide in favour of inclosure, if they are induced to believe that they have nothing to do in order to procure inclosure but to resist regulation, would not improbably express a different opinion, if it were brought home to them that Parliament would not sanction the inclosure of extensive tracts of land, if resistance were offered to any portion of it being kept in its open state, and regulated in accordance with the provisions of the Commons Act of last Session"—(*Mr. Fawcett*) —instead thereof.

Question put, That the words "the Committee recommend the inclosures generally for approval and confirmation by Parliament," stand part of the proposed Question.—The Committee divided:

Ayes, 7.	Noes, 2.
Sir Walter Barttelot.	Mr. Fawcett.
Mr. Leveson Gower.	Sir Charles Dilke.
Mr. H. Cowper.	
Sir William Vernon Harcourt.	
Lord Henry Scott.	
Mr. Pell.	
Mr. C. B. Denison.	

Another

Another Amendment proposed, to leave out the words "subject nevertheless to the following conditions"—(Mr. *Pell*).—Question put, That the words proposed to be left out stand part of the Question.—The Committee divided:

Ayes, 8.	Noe, 1.
Sir Walter Barttelot.	Mr. Pell.
Mr. Fawcett.	
Mr. Leveson Gower.	
Mr. H. Cowper.	
Sir William Vernon Harcourt.	
Lord Henry Scott.	
Sir Charles Dilke.	
Mr. C. B. Denison.	

Another Amendment proposed, to leave out the word "two," in line 3, in order to insert the words, "one, nor more than three"—(Mr. *Pell*)—instead thereof.—Question put, That the word "two" stand part of the Question.—The Committee divided:

Ayes, 8.	Noe, 1.
Sir Walter Barttelot.	Mr. Pell.
Mr. Fawcett.	
Mr. Leveson Gower.	
Mr. H. Cowper.	
Sir William Vernon Harcourt.	
Lord Henry Scott.	
Sir Charles Dilke.	
Mr. C. B. Denison.	

Main Question put, and *agreed to.—Resolved*, That the Committee recommend the inclosures generally for approval and confirmation by Parliament, subject nevertheless to the following conditions: 1. That the recreation grounds be augmented by not less than two acres in each of the four cases; 2. That the field allotments in Riccall should be increased by 10 acres.

Motion made, and Question put, That the Committee are also of opinion that in future cases of Provisional Orders the Inclosure Commissioners should supplement or support their recommendations by evidence from disinterested parties, and that the Assistant Commissioners should be specially instructed with that object—(The *Chairman*).—The Committee divided:

Ayes, 8.	Noe, 1.
Sir Walter Barttelot.	Mr. C. B. Denison.
Mr. Fawcett.	
Mr. Leveson Gower.	
Mr. H. Cowper.	
Sir William Vernon Harcourt.	
Lord Henry Scott.	
Mr. Pell.	
Sir Charles Dilke.	

Ordered, To Report the above Resolutions, together with the Minutes of Evidence, and an Appendix, to the House.

LIST OF WITNESSES.

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MINUTES OF EVIDENCE.

Tuesday, 5th June 1877.

MEMBERS PRESENT:

Sir Walter Barttelot.
Mr. H. Cowper.
Mr. C. B. Denison.
Sir Charles Dilke.
Mr. Fawcett.
Mr. Leveson Gower.
Sir William Vernon Harcourt.
Mr. Pell.
Mr. Sclater-Booth.
Lord Henry Scott.
Mr. Arthur Walsh.

THE RIGHT HONOURABLE GEORGE SCLATER-BOOTH, IN THE CHAIR.

Mr. GEORGE RIDLEY and Mr. JAMES CAIRD, called in; and Examined.

Chairman.

1. (To Mr. *Caird.*) YOU have laid before Parliament, and we have it here, a report upon certain inclosures which you consider to be urgent and important, and which you desire to have proceeded with in the present Session?—Certainly.

2. Is the Committee to understand that all proceedings in relation to these particular inclosures have been commenced *de novo*, and carried out strictly in accordance with the provisions of the Commons Act of last year?—Yes, so far as we believe.

3. You had probably some view as to the peculiar desirability of selecting these specimens to begin with, had you not?—Yes, they are of one class; and it appeared to us that they were of such a character that the Committee would most likely entertain them, and we were very anxious, working under the operation of a new law, to ascertain the general opinion of the Committee upon such points as might arise in them.

4. Those having been your views, and you having made up your minds as to the policy of these particular inclosures, and you having reported accordingly, the Committee met before Whitsuntide, and desired that for further security special notice should be sent down to the different localities to the effect that the Committee were about to consider the proposed inclosures, and to invite opposition, if any further opposition were ready to come forward?—I received a copy of such a notice, and we immediately had it prepared and sent to the different localities, and had it posted and advertised in the same manner in which the notices for the meetings had been made.

Chairman—continued.

5. Now, the Committee having your report before them, and also having looked at the map, desire to be informed why, in your judgment, this inclosure is desirable for the interest of all parties concerned, and why it is (as we may assume it to be) the only alternative to leaving things as they are now, why you propose that the division in severalty should be effected, and why you do not propose any means of regulation by which the same object might be attained without such division in severalty?—We believed that in the report which we had presented to Parliament we had very fully set that out in detail. We described the position of affairs at present, and we endeavoured to give such reasons as seemed to us adequate to show the great advantage that would arise from a change from the present system to that under which each separate owner should hold his property in the manner that he could most economically cultivate it. It would, I think, be only going over again the report, which is already in the hands of the Committee, if I were to attempt to define what is so fully set forth there; but I should be most happy to afford any additional information if any Member of the Committee should desire to it.

Sir *William Harcourt.*

6. I observe in a paper I have got before me that the acreage is put down as 1,862; I have got North Luffenham before me at this moment?—"North Luffenham 1,636 acres," I have here.

7. I have

Mr. *Ridley* and Mr. *Caird*.

5 June 1877.

Sir *William Harcourt*—continued.

7. I have a paper before me headed "North Luffenham, A.;" would you just look at this paper (*handing the paper to Mr. Caird*). That is the paper giving the rental, is it not, and the acreage?—This must be correct, I should imagine. That paper contains the acreage and rental of the whole parish, and the whole parish, is not included, as I understand, in this.

8. "Declaration as to consents to draft Provisional Order in the matter of the inclosure of the open field land low pasture, high pasture, great meadow and little meadow, in the parish of North Luffenham;" I find that here are given 1,862 acres, of which the rental is stated to be 4,444 *l.* Now I see that that includes certain houses and gardens, but, taking it on the whole, it would give, as near as possible, a rental of 52 *s.* an acre for the land. Now, might I ask you, does the land in that district which is inclosed on an average let for more than 52 *s.* an acre?—I should not think it did.

9. I mean that it strikes me, looking at this paper before me, that the rental of this land, which is said to be in so disadvantageous a condition, is a high rental as compared with agricultural land that I am acquainted with. (Mr. *Ridley.*) I think the explanation will be found to be really this: that paper to which the honourable Member is referring is the rental of the whole parish, and has got in it the rental or assessable value of the old already inclosed lands.

10. I think not, because I have here Lord Aveland's land. (Mr. *Caird.*) It is the railway property Mr. Thompson explains.

11. Here is Lord Aveland's land; that is not railway property; here is two acres and one rood of land let at 3 *l.* 11 *s.* 4 *d.*; now the next lot is 25 acres, 32 *l.*; the next lot is 16 acres, 27 *l.* 5 *s.* 6 *d.*; the next is six acres, 8 *l.* 14 *s.* 6 *d.* What I want to know is this: why is this land stated to be in so desperate a condition which has a rental which seems to me to be something like 30 *s.* an acre. (Mr. *Ridley.*) The explanation which I give will be found the correct one, I think, that that paper really gives the whole of the lands in the parish, including the old inclosures as well as those now proposed to be dealt with.

12. Cannot the Commissioners tell us which of these lands are lands not inclosed and which are inclosed. (Mr. *James Flux.*) By reference to the plan I can show it.

13. (To Mr. *Caird.*) I would ask whether the Commissioners have themselves upon the spot ascertained the particular plots of land in the parish which are at present inclosed and those which are not inclosed and are to be affected by this Order, or whether they have relied upon information which, as Mr. Flux just now said, was sent up from the locality?—In regard to the valuation of the land, certainly we have relied for information sent up from the locality. We have had also the advantage of our Assistant Commissioner's personal inspection of the land on the spot, and I myself walked through the lands to see the general character of the country. The impression left on my mind from the information which I received on the spot was that the lands, in the state they were in, were worth from 20 *s.* to 25 *s.* an acre as they were, and that the process of inclosure by which each individual would get his separate portions put together and the disadvantages of the present mode of occupancy would be altered, would raise their value probably 50 per cent.

Sir *William Harcourt*—continued.

Mr. *Pell.*

14. The parish which the Committee are now upon is North Luffenham; you have been at North Luffenham?—Yes.

15. Did you go into the village?—I walked through the village.

16. Are there any old inclosures in North Luffenham that you saw?—There are old inclosures, but I did not walk through them.

17. You know very well, as many of us do, the general character of the lands proposed to be inclosed; there are certain old inclosures in the parishes?—Yes.

18. Those generally are found surrounding the village, generally in grass?—As a rule it is so.

19. That rule held good at Luffenham, I suppose?—I do not think it did; a good deal of this land which is in open field comes close to the village.

20. Then you mean to say that there were old inclosures; they did not immediately surround the village; the open fields ran up to the houses, but there were old inclosures?—There were old inclosures, as I was informed; I did not see them specifically in any way; I only desired to take a general view of the country for the purpose of being enabled to form an opinion upon the report of the Assistant Commissioner.

21. Of your own knowledge can you say whether a house, a farm and premises in the village, and old inclosed and uninclosed lands, are frequently let at one take to one person, the three descriptions?—No doubt.

Sir *William Harcourt.*

22. I will take North Luffenham; do you know what the acreage of the whole parish is?—I do not.

23. Do you know at all what proportion of the whole parish is in open field?—I do not.

24. Can you tell me what is the relative value of inclosed land in that parish in respect to rental as compared with this uninclosed land?—I cannot tell you as a fact; my attention was entirely directed to the land which we were asked to consider with regard to inclosure.

25. You could not say then that the land which is inclosed in that parish lets at a higher value than the land which is not inclosed, as a fact?—I cannot answer the question.

26. Now, for instance, I find here in North Luffenham a block, "land and premises put under the name of Lord Aveland, 288 acres let at 343 *l.*"; did you see that block; was it all in one farm?—I did not see that specifically; I cannot answer that, but I should think it would be something like the price I have put upon it, something like 25 *s.* an acre.

27. Then I see that the smaller plots vary very much; but you cannot tell me whether the inclosed land in that parish lets at a higher rate or a lower rate than this land in this condition?—I cannot answer the question.

28. Do not you think that that would be a very material element in considering the advantage of the inclosure as a practical test, whether or not this open field land does or does not let at very much the same rate as the other land?—I suppose probably the lands are let together, that the open fields and the old inclosed lands are let together

Sir *William Harcourt*—continued.

together as one farm. The disadvantage of cultivating land in those narrow strips and in the manner in which it is divided and the great distance which one portion is from another, all those circumstances which have been pointed out in the report appear to me so obviously to show the advantage which would arise from consolidating these different possessions that it did not for a moment occur to me that there could be any doubt about it.

29. I see you object to what is called, in your report, the "system of ancient village community" on general principles?—I think they are inconsistent with the present state of society.

30. And that as a general principle they should be abolished?—I do not speak of abolishing anything, but I think as a question of economy in agriculture it is inconsistent with the modern practices and with the employment of the improved implements and machinery of the present day.

31. Now, I observe from this paper, which it is suggested represents the whole acreage of the parish, that the acreage is 1,862 acres; according to this paper and in your report it appears at North Luffenham that the North Luffenham to be dealt with under this Provisional Order is 1,636 acres; that is to say, that there would then be only about 200 acres of inclosed land within the parish at present, and that 1,636 acres of that parish are uninclosed at present, as against 200 inclosed; would that be about it?—I think very likely so.

32. Then this paper does practically represent in bulk the whole parish, and I observe, that taking it all together, it represents a rental of some 52 *s.* an acre?—I think you will find (I have not seen the paper to which you refer) that a considerable portion of that rental arises from railway property which cannot be taken as acreage rental.

33. Do you mean to say that this paper does not come under the consideration of the Commissioners?—It comes under our consideration in this fashion, by showing us that there has been an adequate amount of consent before we can agree to the inclosure.

34. It strikes me as so important a paper that I am rather surprised that it has not attracted your attention. Now you suggest, or it is suggested to you, that a great portion of this is railway property. It is true that there is a sum attributed to the Midland Railway Company of 568 *l.* for 14 acres, and to the London and North Western Railway of 113 *l.*, and that would raise the acreage?—It is an important element in the consideration of the acreage value.

35. But still if you come to look at this paper you will find that the whole of this land rents at very considerably above 1 *l.* an acre?—That is exactly what I have stated; that the information I had received was, that it was rented at about 20 *s.* to 25 *s.* an acre.

36. And you could not tell us at all what the average rental of the inclosed land is at the same time?—I did not direct my attention to that subject.

37. That is, information which we could obtain from persons on the spot?—Yes.

38. Is there any person from the spot who is here now?—There are two gentlemen here; Mr. Thompson, who represents Lord Exeter, and Mr. Flux, who represents Lord Aveland. Mr. Thompson is from that locality; Mr. Flux, I believe, lives in London.

Sir *William Harcourt*—continued.

Mr. *Ridley* and Mr. *Caird*.

5 June 1877.

39. Then Lord Aveland and Lord Exeter are the principal promoters, I suppose, of this Provisional Order?—Yes, I believe they are.

40. Now I should like to ask you what is the nature of the tenure of this property; I see that Lord Aveland is put down as the proprietor of a large portion of it; does he hold it in right of some other property, or is it a separate tenure by itself of that property?—I understand it to be separate tenure.

41. He has the land subject to the servitude of the grazing of red cattle?—Yes.

42. Like a man who has a property with a right of way upon it; he has this property subject to the condition, that after a certain period commoners' cattle shall feed upon it?—No doubt, and his cattle would have the same privilege over his neighbours' property.

Chairman.

43. When the Committee met on the first occasion I informed them, from the information that I had from you, that there were in all seven cases of inclosure that you thought would be ripe for consideration this year?—Yes.

44. And out of those, now you have brought before us four?—Yes.

45. That is Riccall, Barrowden, and the two Luffenhams; what are the others that, upon the further information which you have, you think would be fit for consideration?—I think there is only one now in which there would be time to get the necessary notices given, to afford an opportunity to obtain the assents; that is Llanvair Waterdine. We received the assents two days ago.

46. You would not propose to go into the other two this year?—It is now too late.

47. Something has been said about regulation. The Act of last Session puts the regulation in the fore front of the title; it is an Act "For facilitating the regulation and improvement of Commons, and for amending the Acts relating to the inclosure of Commons." What have you to say as to the provisions in the Act for regulation; have you tested them in any way; have you endeavoured to suggest regulation, or have you met with any suggestions for regulation on the part of parties interested?—We have had three applications for regulation which are now under consideration; only three out of 33; I think we have had 33 applications altogether, three of which are for regulation, and 30 for inclosure. (Mr. *Ridley*.) We have three more applications for regulation coming in, but the applications are not yet made. I have seen the parties, and we have had a little correspondence about them, but the formal application has not been sent in.

48. (To Mr. *Caird*.) Has the question of regulation been settled with respect to these four inclosures which we have before us?—There has been no question to settle; the people themselves applied for inclosure, and the circumstances of the case are not suitable for regulation.

49. You do not see your way under the provisions of the Act to apply the principle of regulation in a way which would have any beneficial effect worth notice?—Not in these cases. (Mr. *Ridley*.) These are arable fields.

Mr. *Ridley* and Mr. *Caird*.

5 June 1877.

Mr. *Walsh*.

50. (To Mr. *Caird*.) But in the case of village greens it would then be advisable, would it not, to regulate?—Certainly, so far as rights of common are concerned; and we always, on inquiries being made, press the preference that has been shown by Parliament for regulation rather than inclosure. We very often have found the answer given to us that they do not think the advantage that would accrue from regulation in their particular cases would compensate them for the cost of carrying it through. (Mr. *Ridley*.) I may be allowed to add that in our series of questions that we send out we particularly call upon the parties to state to us the reasons why, in their opinion, inclosure by way of severalty is more advantageous, or likely to be more beneficial, than proceeding by regulation.

Chairman.

51. And that would have been done as a matter of course in these four cases?—It was done in these four cases; it is done in every case; it is in the printed form in which Mr. Caird said just now that the parties themselves applied for inclosure in severalty.

52. Whom do you mean by "the parties;" a mixture of all classes, or only the great owners?—(Mr. *Caird*.) The great owners, as I was given to understand, have in this case for a very long period objected to inclosure, and it is the parties themselves who are most closely interested in it who are really the people most strongly in favour of inclosure now; such is our information.

53. Do you mean the parties interested as owners, or as occupiers, or both?—Both; those who are either owners in fee or who are the occupiers under those owners in fee, and as such use the common right. The occupiers do not apply, but we are given to understand that they are all in favour of it.

Mr. *Pell*.

54. But they have no *locus standi*?—No. (Mr. *Ridley*.) Under the Act notice is given that the Assistant Commissioner will hear all those persons whether they are interested or not. (Mr. *Caird*.) I should like now, if Sir William Harcourt will permit me, to offer a few remarks upon the paper to which he referred, and which I have since had an opportunity of carefully examining; I have analysed it, and I find that 1,823 acres in that paper show an estimated rateable value of 2,174 *l*., which is about 23 *s*. 6 *d*. an acre; the remaining 40 acres comprise a brickyard, which yields 300 *l*. a year; the Midland and the London and North Western Railways, which, together, yield 682 *l*. 10 *s*., the rectory house, which is 50 *l*., and the cottages, 525 *l*. 16 *s*., and the tithe rent-charge, 624 *l*. Except the tithe rent-charge these rentals arise upon 40 acres of land; so that out of the 1,862 acres, 1,823 are let at about 23 *s*. 6 *d*. an acre; it was to that, that I, of course, referred in my evidence.

Sir *William Harcourt*.

55. You say that you were informed that there was no objection to the inclosure from the parties interested. The Commissioners I suppose in these matters rely altogether, or almost altogether, upon the report of the Assistant Commissioner?—We necessarily do so, but in this case, as it was the commencement of a new system, we thought it right that one of the Commissioners should visit the locality, and satisfy himself upon broad grounds as to the propriety of recommending this inclosure.

Sir *William Harcourt*—continued.

56. How many acres did you say, according to the analysis you have just made, were arable land in this North Luffenham case; you excluded the brickyard and cottages?—The brickyard and cottages are 40 acres.

57. How much was arable land?—I cannot distinguish the arable from the pasture, but the rest of the land is 1,822 acres.

58. That cannot be right, because the whole is only 1,600 acres?—We were told that the whole of the parish which is included in this paper which you have before you, showing the rateable value, is 1,862 acres.

59. As to this figure which you have given us of 23 *s*. 6 *d*. as the rateable value, is that the same thing as the actual letting value?—I cannot answer that question.

60. Surely that is a very important thing, is it not, if we are really here upon the question of what is the letting value of the land; as a general rule, the value in the rate book is put considerably below the actual letting value, is it not?—It is so usually, to a certain extent.

61. Therefore the fact is that the actual letting value of this land would be considerably above 23 *s*. 6 *d*. an acre, would it not?—That I cannot answer. In this particular case I can only give you the statement placed before us, and that which was given to me, and I was very desirous to be able to show that it was reconcilable with the statement on the paper.

62. Therefore I should think if this came from the rate book only we may assume that the actual value was considerably higher than the rateable value?—I think that is very likely. I do not know what the addition might be; it might be 27 *s*. perhaps, taking the real value; my information was from 20 *s*. to 25 *s*.

63. I think you have already told me that you are not able to state whether the actual value of the land which is inclosed is higher or lower than that of the land which is not inclosed?—I have since heard how that is, but I cannot tell you from my own knowledge; I have explained to you already that I am unable from my own knowledge to tell you.

64. Now I was going to ask you the exact nature of the tenure of this land. I gather from you that taking, for instance, this land entered as Lord Aveland's at North Luffenham, that is land held as private property subject to a right of grazing during a certain period?—That I understand to be so.

65. Have not the Commissioners made any investigation, before recommending this inclosure, as to the real character of the tenure of this land. (Mr. *Ridley*.) The right of pasturing upon their land commences after the crops are removed from the arable land.

66. So I understand; but might I ask the Commissioners what steps they took to inquire into the character of this tenure which they condemn in their report, before they so condemned it, and if they would kindly give us an accurate account of the nature of that tenure?—That tenure is that these strips of land shown upon that map are held by individual owners, and are cultivated from year to year by themselves,

Sir *William Harcourt*—continued.

selves, or sometimes by their tenants, I dare say, with a crop.

67. And how is that ownership transmitted?—If the man is an owner in fee-simple, I take it that he would sell his strip as anybody else is able to sell his land.

68. That is exactly what I wanted to know, because it is important what the character of this tenure is, and I should like to know, if you would kindly explain to us, how the Commissioners arrived at their knowledge of the tenure of this land?—I am not prepared to say that we have gone into that very closely. In some cases the owners of these strips always own them; that is to say, they do not change in the year.

69. That is not exactly my question; my question is this: what is the process which the Commissioners go through before making these reports to Parliament to ascertain the character of the tenure of that land which they describe as a village community, and which they have condemned in this Report. I am not asking whether that is right or wrong; but I want to know what the Commissioners do to make themselves acquainted with this tenure before they condemn it?—We take the representations certainly made to us; and in some cases it is the case that the owner of two or three strips is always the owner of those two or three strips year by year. In some cases it is the case that he has the right not to go upon those two or three strips the following year, but he must go upon two or three others, and he is the owner for that year of another two or three strips; perhaps the year following he again comes back to the further side of the field and gets three or four strips again, totally separated

70. That is exactly what I wanted to know. Now, will you kindly give us an account in North Luffenham of the exact tenure, and what measures the Commissioners took to ascertain the tenure?—I do not know that we did take any particular measures. The Assistant Commissioner states, "The owners of the land own in known acres."

71. What you know on the subject is principally derived from the Assistant Commissioner?—Of course our information is derived principally from the Assistant Commissioner's Report, and any information which other people may bring us who are acquainted with the facts of the case.

72. Let us take this North Luffenham case: you see we are now coming to a state of things quite different from that which was suggested before, that each owner owned this as his own private property, subject to a right of grazing. As I understand from you in many cases the whole is held, as the lawyers say, *per mie et per tout*, and nobody has an absolute ownership in any particular plot; one year he may have to take one plot, and another year another?—That is so. (Mr. *Caird*.) I do not think that is so in this case; they are the owners of fixed quantities, of fixed and certain portions; they do not change.

73. I understand from Mr. Ridley that the same man does not have every year the same plot, but taking the whole of the land which is held in commonalty by the village he takes one year one plot, another time he may have to take another plot; in fact, the whole of the pro-

Sir *William Harcourt*—continued.

prietors are not proprietors of the several plots, but of the whole. I should like to know is that the case in North Luffenham. (Mr. *Ridley*.) I believe it is not, and I do not think I gave the honourable Member that answer, that it was so specifically in this case. I began by explaining the difference there does exist in various kinds of holdings of these lands in different parts. I find, upon referring to the Assistant Commissioner's Report, that in this case they own "known acres," that is ascertained acres.

74. So I understand, and that they always hold. Now, is that the case in Barrowden and South Luffenham, and North Luffenham? (Mr. *Caird*.) That is so: that is the information I received, that they do not hold in the manner you mentioned, by changing now and then, which is a most unfortunate system; this, bad as it is, is much better than that system of changing; because when a man changes from one plot to another he has never an interest in making it any better.

75. Then I understand from you that in these three cases the land is held by proprietors, and that they hold it as anybody would hold freehold land, except that it is subject to this grazing right?—That is what I understand it to be.

76. Now I will take this land held by Lord Aveland; he holds that land, I understand from you, as if it were his own land, only that it is subject to the grazing right of certain people after Lammas-day?—Yes.

77. Who are the people who have the grazing right?—The whole of the parish who have any rights at all.

78. What determines who are the people in the parish who have rights?—The ownership of the land; the owners have a common right of pasturage after the crop is removed.

79. What is it necessary that a man should possess in order to give him a right of grazing, we will say upon this land of Lord Aveland's?—It is necessary that he should possess land.

80. How much land must he possess?—I am not aware that there is any limit, except that limit which would necessarily follow from the fact that he would not be able to keep more stock during the rest of the year than his holding would enable him to do in winter.

81. Is it then the principle of levancy and couchancy?—I should think it is on that principle.

82. But surely we are entitled to some better information than merely an opinion formed at the moment. Are these matters which have been inquired into by the Commissioners?—The description given by the Assistant Commissioner is to this effect, and it is upon this that we have based our decision in the matter: "No part of the land proposed to be inclosed is waste of a manor; it is all open field or Lammas land; the owners of the land own in known acres, and after the crops are gathered they turn on till the land is wanted for cultivation, stocking by stints according to number of acres; as regards the cow pasture a question was raised, but was afterwards settled; the owners of stints turn on a fixed number of stock from the 1st May to the 25th December; it is then closed till 1st May again."

83. The last part of that is as to the grass land?—It is the cow pasture.

84. Where is the description of the rights over the arable land. I gather that to be the account

Mr. *Ridley* and Mr. *Caird*.

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Sir *William Harcourt*—continued.

of the cow pasture and the grass land; where is the description of the rights over the arable land?—Perhaps you will allow me to read a little further; "On behalf of the owners of stints, it was claimed that the soil of the cow pasture is vested in the owners of the stints, and that originally it was owned in fixed number of acres by each owner, and that so many stints went to the acre, and that the precise acres have been lost as to situation, and that the rights are now known by number of stints."

85. Will you explain how that is worked; what is the difference which is there pointed out between the former condition of a fixed number of acres, and the way in which it is now regulated by the stints?—The precise acres having been lost; it would appear that they have now reverted to a fixed number of stints; they have limited themselves amongst themselves to a fixed number of stints.

86. Were the precise acres, the acres which gave them the title?—I suppose the acres which they had as private property.

87. Does it mean that the proportions have been lost, or that the land had been lost, or what does it mean?—The boundaries have been lost; it is very difficult to know the boundaries; there is very often only a little narrow piece of grass land between them.

88. Now just explain to me this: supposing that there is a man in North Luffenham now who has got five acres of land, I suppose he would have a certain right of grazing over this land, the property of Lord Aveland, for instance, after Lammas Day?—No doubt.

89. What do you propose to do with him in the future?—That will be dealt with if the inclosure proceeds by a careful inquiry on the part of the valuer, who will ascertain the extent to which those rights were permitted to be exercised, and he will be compensated accordingly.

90. He would receive compensation in what form?—By allotment.

Sir *William Harcourt*—continued.

91. That is the way that you propose to deal with this land?—That all follows in the general process of inclosure.

92. Just explain this to me. I saw a map (I do not know whether it was of North Luffenham) cut up into very small strips; I see that Lord Aveland is put down here for a good many hundred acres in North Luffenham; what is there to prevent his throwing those strips together, leaving them, of course, subject to the right of pasture of other people; why is it necessary that that land should be in those very small strips?—Because he holds it in a great variety of places; the strips are not contiguous.

93. I see him put down here for one block of land and premises, 288 acres; that, I presume, must be contiguous. Lord Aveland is put down to one block of 288 acres, let at 343 *l.*; then 148 acres, let at 188 *l.*; then 252 acres, let at 299 *l.*, and then 181 acres, let at 185 *l.* Why is it necessary that those things should be in small strips?—I apprehend that though it is stated in one block it means that one tenant occupies that extent of ground, but the ground itself is all in strips such as you see upon the map.

94. That, I suppose, the Assistant Commissioner, who has been on the spot, would be able to answer?—Yes.

95. Who is the Assistant Commissioner who has been at North Luffenham?—Mr. Charles Wood.

96. If two plots of lands belong to the same proprietor adjoining one another, there is no reason at all, is there, in the nature of this tenure, which should prevent him from throwing those together?—I should imagine he would do so at once; such a thing could hardly exist now. I should expect if he had several plots lying together, they would by this time have been put together; but from the appearance of the plots on the ground, and on the map, I am strongly impressed with the belief that there are no such blocks as you describe on the paper before you, in one piece.

Tuesday, 12*th June* 1877.

MEMBERS PRESENT:

Sir Walter Barttelot.
Sir Charles Dilke.
Mr. Fawcett.
Mr. Leveson Gower.
Sir William Vernon Harcourt.
Mr. Pell.
Mr. Sclater-Booth.
Lord Henry Scott.
Mr. Arthur Walsh.

THE RIGHT HONOURABLE GEORGE SCLATER-BOOTH, IN THE CHAIR.

Mr. JAMES CAIRD, re-called; and further Examined.

Mr. *Caird.*
12 June 1877.

Sir *William Harcourt.*

97. I WBS just going to ask you, in order not to embarrass the Commissioners by unnecessary questions of detail, if you would explain to us exactly your view of the functions of the Commissioners as contrasted with the Assistant Commissioners, or any other officers, in reference to the investigation into the policy of these inclosures which are recommended to Parliament?—I think that may best be done by shortly narrating the course of proceedings which we have adopted under the new Act, and which may be thus described. As soon as the Bill passed, the Commissioners prepared instructions for the guidance of persons who might apply to them. A copy of those instructions I have here, and shall be glad to put in (*producing the same*). These were framed after careful consideration of all the clauses of the Act, commencing with "regulation," and explaining that where "inclosure" is sought, special information must be furnished as to the benefit to the neighbourhood, as well as to private interests, which should render inclosure expedient as opposed to regulation. A form of application, embodying questions on all points necessary to enable the Commissioners to form an opinion whether a *primâ facie* case could be made out, is then sent out, one for regulation and the other for inclosure. These questions bear consecutive numbers, and when filled up with the answers, are returned to the Commissioners. If the Commissioners consider that a *primâ facie* case has been made out, they, having first cleared up any doubtful point by correspondence with the applicants (and we have had a great deal of correspondence up to this time with the applicants in other cases as well as in this), instruct an Assistant Commissioner to hold a local inquiry, after not less than 21 days' notice given, as prescribed by the Act. He inspects the common, and holds at least one public meeting in the evening, where everyone present is invited to state his views. The original application is gone through, question by question, seriatim, and the general effect of the opinions elicited is expressed in the answer which the Assistant Commissioner places against each question. He, as it were, tests the answers which were given by the applicants in the first place, and according to the opinions elicited by him, he confirms the answers

Sir *William Harcourt*—continued.

stated there, or alters them into whatever effect may be the result of his inquiry. He is accompanied on his inspection of the common by any other persons present who volunteer, and he considers and indicates his opinion as to the most suitable position for the public allotments for recreation and field gardens. Having completed his inquiry he reports the result to the Commissioners, with his reasons for the conclusion at which he arrives. If that is favourable to the application, the Commissioners, if they deem the conclusion a right one upon full consideration of all the circumstances that have been brought to their notice, both by the applicants and by the report of the Assistant Commissioner, frame a draft Provisional Order for the consideration of the persons interested, specifying, in the case of regulation, whether all or any of the provisions for adjustment of rights and improvement of the common are to be put in force, and inserting all such of the statutory provisions for the benefit of the neighbourhood as are applicable to the case; and, if for inclosure, the quantity and situation of the allotments for recreation and field gardens, and provisions for protection of public and private interests. The Commissioners then cause a copy of the draft Provisional Order to be deposited in the parish, full notice being given to insure publicity of such deposit having been made, and of their intention to certify the expediency, upon the consent given of at least two-thirds in value of the interests affected. When the necessary consents are obtained, the Commissioners prepare and forward, through the Secretary of State, their Report to Parliament; and under the instructions of this Committee (given through the Chairman to me), they give notice through the same means, exactly as before, of the day which the Committee have fixed to consider the Report, and that any objections will then be heard, a statement of such objections being previously sent in to the Committee Clerk. A copy of that advertisement I have here (*producing the same*). At this stage the four cases now before the Committee have arrived, and no objection from any quarter, so far as we know, has been intimated, either to us or to the Committee Clerk. Every publicity has been given; every publicity was given to the local inquiry;

Mr. *Caird.*

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Sir *William Harcourt*—continued.

every publicity since then was given to the notice that any objections would be heard before this Committee, and no objections whatever, so far as we know, have been intimated. The Commissioners have framed their Report in such a manner as they thought best adapted to enable Parliament to judge of the expediency of their Provisional Order, and with such particulars as were furnished to them by the applicants, after having been carefully tested and corrected by local inquiry. The reasons which influenced the Commissioners in assenting to inclosure in these cases, as opposed to regulation, were the following: As to Barrowden (that is the first which is named in our Report; I take them in the order of our Report), 1,240 acres of Barrowden are open arable fields, which could not be otherwise dealt with than by inclosure. There is really no question of regulation in the case of "open arable fields," which are scattered in numberless narrow strips of intermixed ownership all over the parish; the only mode by which the change which is desired can be effected must be by the proceedings under an inclosure.

Mr. *Fawcett.*

98. I am sorry to interrupt you, but that is your opinion, not the Act?—I am speaking now of the action of the Commissioners, and of their views of what is necessary to be done; 395 acres are meadows and pasture, which may be said to be private property; it is property upon which there are limited and defined rights, and upon which no one, except the persons having those limited and defined rights, can have any right of access. These, for many reasons, their owners prefer to have relieved from inter-commonage, each owner having his own portion assigned to him. Two hundred and ninety acres are waste of the manor, wet uncultivated waste in its present state, but capable of great improvement by reclamation, which can best be done, in our opinion, by each individual being encouraged to improve his own when it becomes private property. No part of this, as I am informed, is known to be resorted to for recreation or games. It is from this 290 acres only that the Commissioners are entitled to require public allotments as the condition of their assent, but it is the worst of the land, and the most distant from the inhabitants. They have obtained 20 acres of the best land, close to the people, for field gardens, and four acres of the most suitable and convenient land for recreation, all of which is to be put in proper order for these purposes at the cost of the common-right owners. In addition to this the benefit to the neighbourhood, as well as to private owners, will be secured by the immediate impetus which will be given to improvements by what Arthur Young terms the "magic influence of property." (I think the honourable Member for Hackney will corroborate me in that, as I quote it from his own writings.) The country is watered by a fine river with fertile meadows along its banks, and fertile land rising in gentle slopes admirably fitted for every modern agricultural improvement. There cannot be a doubt that the production of the soil will be vastly increased, and, leading to and flowing from that, the means of employment also. The builder, the carpenter, the blacksmith, the implement-maker, the shopkeeper, and the tradesman, the corn and manure merchant, will all feel the benefit of it; and the public will to some small extent share in the increased supply of meat and dairy produce, for which there is a ready outlet to good markets. Next I will take the case of South Luffenham, 1,074 acres. Except the heath, 290 acres, already noticed in Barrowden, the right to which is also claimed by this parish (there is a dispute as to which of those parishes has the right to the heath), the whole of this is private property. It is nearly all "open arable fields" to which regulation is not applicable. There is a railway station on this land giving access to the best markets. It is all excellent land capable of vast improvement and greatly increased production. If the heath is found not to belong to this parish the Commissioners could not have required any public allotments. But the owners have acted with much liberality, and have agreed to an allotment out of their private property of 15 acres of the best and most convenient land in the parish for field gardens, and of four acres equally suitable for recreation. With this and the general advantage which will arise from energetic agricultural enterprise, there seemed to the Commissioners good ground for anticipating benefits to the neighbourhood as well as to private interests. The third case is that of North Luffenham. No part of this is waste of a manor; it is all private property, the "open arable fields" rendering inclosure the only mode of dealing with it. It is capable of very greatly increased production, for which it has an outlet to the best markets from a railway station which touches it. The same benefit to the neighbourhood as in the two preceding cases will attend this. In this case the Commissioners are not entitled to require public allotments; but these have been assented to very liberally. Twenty acres of first-rate land close to the population will be allotted for field gardens and five acres of old pasture, shaded by fine trees and close to the village and the school, will be allotted for a place of public recreation. The fourth case is that of Riccall, in Yorkshire. There there are 691 acres of "open arable fields" and 606 acres of waste of a manor. The open arable fields can only, as in the cases before mentioned, be effectually improved by inclosure, in our opinion. The 606 acres waste of a manor comprised the dam which will be improved for pasture and can be much improved, but it will be rather a costly matter for drainage, and the rest of the land which, from the nature of its soil, though it cannot be converted into good pasture, may be made excellent root and corn land. This is a case of reclamation which will be costly, but profitable, if carried out under the impulse of individual interest, each man having his own allotment, and deriving to himself the return of his industry and enterprise. The extent of land to be allotted for field gardens in all these cases is believed to be sufficient to provide very amply for the wants of all the poor inhabitants who are not at present adequately supplied. The whole of these proposed inclosures are suburban, that is, they are within six miles of towns of 5,000 inhabitants. Due notice in each case has been served on the sanitary authorities, and in each case an intimation has been received that no objection is offered by them to the proposed inclosure. I might add, as giving a money value perhaps to the amount of land which is proposed to be handed over as public allotments, that the land in the three cases of

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of Barrowden and the Luffenhams is extremely valuable land; it is the most valuable in the parish, for it is close to the houses and very accessible from the roads and the railway, and I should say that it might be moderately valued at from 80 *l.* to 100 *l.* an acre, if it were for sale; it is of much more value than the outskirts of the parish; therefore there is really a very substantial amount of money paid, as it were, as the sacrifice or the cost which the parties are willing to pay, in order to obtain the assistance of Parliament for the inclosure. I may be permitted perhaps to add to this explanation, that when we attended here on Tuesday last it was with the object of affording the Committee every explanation in our power. We are entirely, or believe ourselves to be entirely, impartial. I think, if I may be allowed to say so, that in some degree the questions were put as if we were parties in an opposed Bill; but we have no feeling in the matter whatever, except to afford the Committee such assistance as our position enables us to do.

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99. I hope you will not think that any questions which I put are put in that sense; you see we are appointed here more or less to revise this work, and of course it is our business to satisfy ourselves that the conditions which we imagine Parliament to have imposed have been fully carried out. That is the only point to which I should ask to direct your attention. Now you have said that one of the main advantages of these inclosures and probably of all inclosures, is that the inclosure gives a greater interest to the individual owners to develope the capabilities of the soil?—Certainly.

100. That would be a general principle applicable probably, in your view, to every inclosure, whether it was an inclosure of commonable land, or an inclosure of waste of a manor?—It is much more, especially so in the case of commonable land.

101. You have recommended here, in one of these cases, the inclosure of waste of a manor, and probably for the same reasons, though not to the same extent?—I believe that in the particular cases which are now before us, it is the best mode of developing the agricultural capabilities of the land.

102. That is a point I am not at all disposed to dispute, but what I want to ask you is, whether you consider it part of the functions of the Commissioners to consider in respect of these inclosures any question except the economical advantage; I mean especially what I may call the social advantages which may be derived by the population, and especially the poorer part of the population, from a right of pasture, or a right of stray, and the other advantages which they may derive from these open lands. I am not asking you as to these particular cases, but whether you consider that as an element in your recommendation?—A most essential element.

103. That is to say, that though there might be, and probably is always, in an inclosure some economical advantage, there may be cases in which the balance may be the other way, in consequence of the social advantages to the population of keeping the land open?—I quite agree with the honourable Member, and we have at this moment cases under consideration where that very principle arises.

Chairman.

104. Have you refused any applications on those grounds?—We have not refused any case; we thought it imprudent to refuse any cases until we had appeared before this Committee; but we have withheld several cases for reasons such as that which the honourable Member has set forth in his question.

Sir *William Harcourt.*

105. I know that you are very familiar with the north, and it is the fact, is it not, that in the north of England (certainly it is so there to my knowledge, and I think also in Scotland) it is far more the habit of the rural population to be able to keep a cow of their own than is unfortunately the case in the southern districts?—It is so.

106. And you would probably agree with me that it is a very great advantage to the labourer when he can keep a cow?—A very great advantage.

107. A great advantage not only in a pecuniary sense, but I may say in a moral and a social sense, for the benefit of the children and his family?—Yes, I think it is a great advantage; the position of the agricultural labourers in Northumberland, where that is the case, is, I think, superior to that in most counties.

108. I remember that in the part of Yorkshire that I was born in almost every labourer had his cow, and that was done by the system which you, I dare say know, of a man having a small plot of ground, or a garden out of which he was able to raise hay or roots, or something which enabled him to keep his cow during the winter, and there was almost invariably a piece of common grass land, which was the property of the parish; it used to be called the town-ings; you are probably familiar with that system?—I cannot say that I am familiar with it, but I have no doubt it is so.

109. You would think that anything which did away with a system of that kind, where the town-ings enabled the mass of the rural population to keep a cow, would be a very great social disadvantage which would far counterbalance any addition which might be made to produce by inclosure?—I question whether any addition could be made by any other system beyond that which in such case is at present had from it.

110. Then, as regards pasture land; where pasture land is held in common by a village or by a community, you would not recommend the inclosure even on economical grounds?—Not on economical grounds, unless I was satisfied that some other circumstances rendered it advisable for all parties, including the persons who have rights on the cow pasture.

111. Then, as a general rule, I should gather from you that the holding of a large common pasture for the benefit of the village would be, both on economical and social grounds, an advantage rather than the reverse?—Undoubtedly.

112. And you would not recommend the doing away with that for the purpose of cutting it up into plots among different proprietors?—Certainly not.

113. Now, are there no parts of any of these lands before us consisting of land practically held in common?—Some of those lands are cow pasture; on this cow pasture the persons who have, at present, rights, when the inclosure takes

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place, will be fully compensated, and will get the full value of whatever rights they possess.

114. So I understand; and so they would, I imagine, in the case that I put to you of the town-ings?—I do not expect that this cow pasture will be altered from being cow pasture.

115. Will the lands be grazed in common?—Grazed together by those who have rights over them.

116. They will not be divided?—That may be, or not. The 13th section of 8 & 9 Vict. c. 118, may come to be applied, and the cow pasture be regulated.

117. That strikes me as the important point in this case; are they, or are they not, to be divided; I know you are a person of great experience in these matters, and I want to have your opinion on this point; supposing there was one of these men who had got a small field of two or three acres, where he could grow his winter food for his cow, it would not be the same thing to him to give him compensation, or a little bit of land out of this common of cow pasture, as it would be to allow him to turn his cow in?—The only answer I can give to that is this, that all these people had an opportunity of being fully heard; everybody was requested to state whether they had any objection. In this particular case none of them made any objection, and we must, therefore, come to the conclusion that they were satisfied that this was the best mode of dealing with the state of matters there, and I may add that every right, especially of the smaller class of people, would be very carefully considered and compensated.

Chairman.

118. You say that it is for their advantage, or presumably so for the present, but how about the future; the successors to these people for all time?—They would be in the same position; they would succeed, of course, to the present rights in a changed form, whatever they may be.

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119. Will you explain to the Committee exactly how the thing would work out practically; I will put the case of there being a man with two acres of land in Barrowden, where he might grow his hay, or roots for his cow in the winter, and then the right of stray for his cow during the summer the common of cow pasture; what is the probable form of compensation to him for the loss of his right of stray during the summer?—I can only answer that in this way: that whatever his rights were they will be fully compensated. Perhaps the honourable Member will allow me to say that there is a gentleman from the place, who is the agent of the principal owner, I believe, there, and who is minutely conversant with all that question of detail, and perhaps he would kindly ask him those questions rather than me; for I really am not sufficiently acquainted with the detail.

120. I am not putting this as to a particular case, but rather to illustrate the general policy of the inclosures as operating upon the smallest class of proprietors; for, as you are aware, that is the thing which has a great deal interested Parliament in this matter; and I want to get, not at the views of the agent of the principal landowner in this case, but at the views and the policy in such matters of the Commissioners who report

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upon these things?—The views of the Commissioners are that if the parties have had first the opportunity of stating their views before the Assistant Commissioner, and again of stating their objections before this Committee, and if the Commissioners are placed in possession of no facts or objections to the proposal that is made, they are unable to discover any reason for offering an objection to such a proposal.

121. Now I observe here, that in Barrowden, in answer to Question 25 it is stated that "three persons had declined to join in this application owning 34 acres of the value of 126 *l.*" Now those are illustrations of the small class of owners I speak of; do you know at all, or has any inquiry been made, as to the grounds on which those three persons have declined to join?—Perhaps you will ask that of the Assistant Commissioner, who has made the inquiry on the spot.

122. Would not such a statement as that attract your attention so as to lead to an investigation of the grounds upon which these small men have declined to join in the application of the large men?—These are the only exceptions that were stated. The majority was so great in favour of the application that we were bound by the Act of Parliament to entertain it; we were bound to make the inquiry.

123. In one of the Luffenhams I see that there is rather a remarkable explanation given by the Assistant Commissioners to explain away the fact that a very small proportion in point of number, and I think even in amount, have supported the application; it is the case in South Luffenham; it is at page 8; it is stated in the Assistant Commissioner's Report in reference to Questions 23, 24, 25, and 26: "It is doubtful whether there may not be some rights attached to houses without lands." That is rather an unusual state of things, is it not, with regard to the commonable lands that the rights should be in the owners of houses of the parish without lands?—That would be ascertained in the progress of the inclosure proceedings.

124. When we are upon the antecedent question, as to how far the parties are assenting, it does not even appear what the parties are, or the extent of their numbers, or their interest; for it may be that if it is the fact that all the owners of houses in the parish have this right over this land, the number may be far more numerous than if it is only owners of lands?—Perhaps the honourable Member will ask an explanation from the Assistant Commissioner upon that point.

125. I hope that I am not unduly pressing this, but what I want to ascertain from you is exactly the considerations by which you are governed in revising the opinions and the judgments of the Assistant Commissioner; because here the Assistant Commissioner, recommending this, says he recommends it, though "it is doubtful whether there may not be some rights attached to houses without lands, and, if so, more persons would be interested; but if the total rateable value of the parish be taken, this is (after deducting tithes) 2,199 *l.* 12 *s.* 11 *d.*, and one-third of this sum is 733 *l.*, and two-thirds are 1,466 *l.*; the total rateable value of persons who have signed the application is 1,040 *l.* 3 *s.*, being more than one-third of the total interest, and more assents will be obtained; moreover, in taking the total rateable value of the parish, there has been included the full rateable value of the London and North-Western

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Western and the Midland Railways in the parish, being a total amount of 694 *l.* 10 *s.*, from which considerable reduction ought to be made, and so with reference to inclosure; the total rateable value of the parish would be less, and the proportion of assenting interest greater, and no doubt is entertained of assents being obtained representing an interest of more than two-thirds of the whole, and no one has dissented from the application"?—Since that time the assents have been sent in exceeding the two-thirds in value that are required.

126. At the time of this Report of the Assistant Commissioner recommending the inclosure, there was only a doubtful third obtained?—We are bound to entertain an application upon value to the extent of one-third applying; we are bound not to proceed until we have received assents of two-thirds, or over it, and that was followed in this case.

127. I had better, probably, ask the Assistant Commissioner himself as to what the measures are that he takes in the inquiries which he makes in this matter; but beyond the mere fact of the absence of opposition, you do not think it necessary or expedient to go; I mean, you did not think it necessary in the case of Barrowden to ascertain the grounds upon which the three persons there mentioned declined to join in the application?—We acted within what we believed to be the directions laid down for us by the Act of Parliament. The assent of more than two-thirds having been received, we were bound to report our views to Parliament.

128. Now, the heath and waste of the Manor in Barrowden, which is 290 acres, is at present stocked by the inhabitants, I see it is stated, of Barrowden and South Luffenham; you will see that in the Barrowden proper, in answer to No. 8. Consequently, so far as that 290 acres is concerned, this will be another case of inclosure of a common of which the parish generally, and its inhabitants, have the benefit at present?—Yes.

129. Are there any special circumstances relating to that common which induced you to recommend its inclosure beyond those which apply to every common?—It is extremely wet and covered with furze, and in a very waste state in every possible way. It is not resorted to for recreation from any quarter; it is capable of immense improvement by reclamation, by drainage, and improvement of every kind, and it appeared to us that the best way of attaining that object would be that when the other part of the parish was being enclosed, it should form also part of the whole system.

130. But probably the account you have given of that is true almost of all commons, is it not, that they might be improved by reclamation to a more or less extent?—Many commons are very good sheep pasture; they may be dry, and they do not require the necessity of a large outlay of capital to bring them into a condition for agricultural improvement, and in their natural state they may yield a very good return; but this common is in a very wild state indeed, and could only be reclaimed by a very considerable expenditure of money, and that could best be found by private owners.

131. Is not that precisely the very sort of case which was contemplated by the regulation of commons, that is to say, where, as was done at Wimbledon and other places which we are

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familiar with, a case was made out that it was necessary to improve the common, to drain it, to reclaim it, and manage it; and is not the case of a common susceptible of improvement of that sort while still preserving it for the benefit of the population one of the cases that lend themselves to regulation?—It is not in any sense to be compared with what was done in the instance you quote. This is in a purely rural district. The nearest large population to it, that of Stamford, is amply supplied with a recreation ground of its own. The sanitary authority there got notice that the application was to be made for the inclosure of this common, and they made no objection. The inclosure will have the effect of bringing near the small number of people, likely to make use of it for recreation, much more suitable ground for recreation, and will also give them the benefit of field-gardens, which they could not otherwise obtain. It was only by consenting to inclose the 290 acres that we were in a position to require the allotment of the field-gardens.

132. In the case of the two Luffenhams you have got that allotment without that screw?—The parties there having, as I said, acted with great liberality.

133. Therefore, what you contemplate to be done with this common of Barrowden is, that it shall be drained and grubbed, and, in fact, converted into arable land?—Subdivided.

134. It will disappear as a common, in fact?—Being converted into arable land. I think that is likely to be by far the most profitable use that can be made of it.

135. I observe that in Barrowden the number of persons who have signed out of 30, who are the persons interested in the land, are stated to be 14; does it occur to you that probably efforts could have been made to obtain the signature and assent of the other 16 by the parties anxious for this inclosure?—I have no reason to doubt that they made such efforts, but I imagine that as soon as they had got the two-thirds assent, which is the assent required by the Act of Parliament, they may not have thought it necessary to pursue the thing further; but a gentleman who is here will be quite ready to answer that question. I perhaps may be allowed to say that we have a very large business in the Inclosure Office, and a great variety of kinds of business, which very fully occupies the Commissioners with matters of principle, inclosure being a very small part of the business of the office. The Commissioners are occupied by questions of the enfranchisement of copyholds, the redemption of tithes, the administration of the University and College Estates, exchanges of intermixed lands, and land drainage and improvement all over the country. There is not a single day in which we are not very fully occupied in such matters, and it is quite impossible that the Commissioners can be thoroughly versed in every question of detail. We must trust to the gentlemen who work out the details to supply us with accurate information.

136. You must not understand me as putting these questions in any sense as a reproach to the Commissioners, but I want to know exactly where and how the Committee are to obtain the information upon which they can act?—The Assistant Commissioner is here to give that information in reference to the details, and practical gentlemen are here to give information, similar

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to that furnished to the Assistant Commissioner and to us, upon which we formed the opinion which we have now reported to Parliament.

137. I observe that you state that, though there is no waste in the manor in North Luffenham, it is stated, in answer to Question 8, that "Certain common rights have been exercised over it by the inhabitants of the parish of North Luffenham"; does that mean that it is a right that belongs to the people as inhabitants, as distinguished from persons who are landowners, because that looks very like a general common right; the phrase used there is this (it is at page 2 of the North Luffenham Paper): "Certain common rights have been exercised over it by the inhabitants"?—I have not seen those papers in print till this morning.

138. I forget what the quantity of acreage of field-gardens you take at South Luffenham is?—Fifteen acres of field-gardens.

139. And you say there are 90 cottages; if each of the cottages had a share, that would be about the sixth of an acre, would it not?—Many of the cottages now have an adequate extent of garden; and the intention is that those 15 acres shall be so divided as to make up any deficiency that may arise in the case of some of the parties, and the extent has been carefully considered by the parties applying as likely to meet all the demands, and to give each, as I understand, a quarter of an acre of that good land; I mean, that with what they already possess, and what now will be added to them, their cottages are expected to have about a quarter of an acre each.

140. I was struck with one phrase in the Assistant Commissioner's Report, which I think appears in all of them pretty nearly in the paragraph which states the advantages which would accrue from inclosure. He says that a better "tone and character" would be given to the parish. Now can you explain what is meant by that?—Do I understand that that is in the Assistant Commissioner's Report.

141. Yes; he says that the effect of the inclosure would be to give a better "tone and character" to the parish?—If I might be permitted to explain the Assistant Commissioner's view, I think it is not difficult to do so; the present inter-commonage and intermixed state of holding lead to constant disputes amongst the people; they are apt to trench upon each other's rights, and there are constant and frequent disputes; it would give a better tone and character to the people, certainly, if all these disputes were put an end to, and more harmony introduced.

142. That is almost an argument for universal inclosure, is it not?—It is one considerable advantage, no doubt, of inclosure.

143. There is hardly an argument, I think, that you have advanced in favour of these inclosures which would not go to the absolute and universal inclosure of all land now held in common?—I think it is a great matter that the cause of disputes amongst neighbours, which must so inevitably arise, should be put an end to. The honourable Member referred just now to the north of England. I lately was in Westmoreland, where a large proposed regulation as well as inclosure has been brought before us; and I was told by the clergyman of the parish that almost fatal encounters take place on the hills there, and that many men go maimed for their whole lives owing to the fact of adjoining occupiers meeting on the hills and fighting as to whether their sheep should cross this point or that point; and therefore I have no doubt that the Assistant Commissioner was justified in saying that the tone and character of the people would be improved by removing the occasion for these quarrels and fights which must otherwise arise.

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144. Then it does come pretty much to what I said, that these arguments are arguments in favour of absolute and universal inclosure in all cases?—They are one argument in favour of inclosure.

Mr. *Leveson Gower.*

145. I suppose in all cases of inclosure the question is one of the balance of advantages?—Yes.

146. And that you may state generally that there are advantages in every case of inclosure, although in some instances the disadvantages may be greater than the advantages?—I should be very glad if the Committee would allow me to state what appear to the Commissioners to be the relative advantages of regulation and inclosure. We necessarily have very carefully considered the point, and probably the Committee may allow me to state what our views are upon it. Taking first, regulation, which is the leading principle of the Act, what may be done under regulation? First, it is the cheapest mode of dealing with the land; the heavy costs really arise after the allotment and fencing of inclosures begin, and it is the easiest course for the Inclosure Office. The fact of its being the cheapest course is a great argument in favour of regulation as against inclosure in every case in which good and adequate reasons can be shown for preferring regulation to inclosure. Then it fixes and limits individual rights, and to a certain extent guards the weak against the strong, because the rights are defined. It leaves the country open; it admits of drainage, planting for shelter, keeping order, and general management. It is specially useful, and to be preferred in the vicinity of large populations where land for extending towns is not required, and, where it is required, part might be inclosed to enable the land to be sold, and part regulated. Such a want as that very often arises near large towns in England, that they are very much hampered for want of building land by commons closely limiting them within narrow bounds; we have the case of Coventry, and the case of Stamford, two towns which were very seriously inconvenienced by the impossibility of extending buildings in the most proper direction, in consequence of the common lands by which they were shut in; in both those cases inclosure has been of immense advantage to both those towns; that advantage could not have been gained by regulation, inasmuch as under regulation you can only sell one-fortieth part of the extent of the common for purposes of management and improvement; but in such cases wherever you have large populations to consider, it would clearly be an advantage, if there is a want of land for the extension of buildings, to regulate a part and to inclose a part; and that would be the view that the Commissioners would take under such circumstances. But, on the other hand, regulation does not admit of the sale or sub-division of land in small properties. The extent

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extent of land which is believed to be still unin-closed is supposed to be about the fourteenth or fifteenth part of the whole area of this country. If land is never hereafter to be inclosed you are practically locking up from all future sale and purchase about a fourteenth or fifteenth of the whole surface of this country. But though the land cannot be sold in cases of regulation, the stints are saleable, and are very apt to be bought up by the principal owner in the hope that uniformity of management, and isolation of stock, if need be, may be secured. In that case, I very much apprehend that regulation in some of the northern counties will be followed, as inclosure has been followed in some places, by the smaller people selling their rights to the greater people, and by degrees the whole of the land in many cases falling into the hands of one large proprietor.

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147. That is generally the results of inclosure, is it not?—No; that is not the general result of inclosure, but in many of the wilder parts of the country it is so. Then the next point is that the veto of the lord of the manor, which may absolutely prevent either inclosure or regulation, cannot be so easily arranged for under regulation as under inclosure, because you cannot give the lord any proportion of the land unless it is to be inclosed, and the only compensation that can be offered to him for giving up his rights is to compensate him in stints, which he may or may not be willing to accept. No field gardens can be required for the poor inhabitants in case of regulation. Field-gardens now are much more important than they were under the old Inclosure Act, because the power which has been given under this Act to exchange wild land for land of good quality close to the people, and most suitable for the purposes of garden cultivation, is a very great advantage over what was formerly the case; the gardens that the inclosure now will provide for the poor will be, as a general rule, of a much more valuable character than they have been hitherto; and the shorter hours of labour which are now common all over the country, are giving the people an increased time to devote to garden cultivation; and, therefore, making this question of field gardens more important than it was under the old Act. Then, with regard to inclosure, having now stated what is in favour of regulation and what regulation cannot do, I would now venture to state what inclosure admits of. It admits of the sale and sub-division of land, and I may state that the number of small properties already created under the Inclosure Acts form a very appreciable proportion of the small properties, between one and 50 acres, shown by the Domesday Book. It is an important question, I submit, the question of the creation of small properties under inclosure. Inclosure affords sites for cottages, and gives room for towns to extend, as I have already explained. Then the question of the veto of the lord is very easily arranged; there is seldom any objection on the part of the lord to inclosure, because it is a simple matter to compensate him by giving him a certain proportion of the land. Public rights are recognised under inclosure by allotments for exercise and recreation, and by field-gardens, the value of which I have just explained. Then the increased value of produce

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from the reclamation of good waste land is very important; and, generally speaking, the waste land being rather in the more elevated parts of the country, the increased produce would chiefly be in the shape of meat and dairy produce, which are articles of increasing necessity in this country. By inclosure you secure increased employment and business to the neighbourhood: first, there is much more regular employment of labour, and, secondly, there is more business with the artisans, the shopkeepers, the corn and the cake dealers, the implement makers, with all classes who are supported by the processes of agriculture and the necessities and requirements of carrying on agricultural farms; and by inclosing there is the cessation of strife attending intermixed occupation of land, which I think is really a matter of some importance. There is another point which I think is of importance, that is the power of isolating your live stock under inclosure, which never can be so completely done under regulation, and thereby preventing the spread of infection and contagion amongst cattle and sheep.

148. But why could not that be done under regulation?—Because you do not fence the lands; the lands are left open, and the stock is all intermixed.

149. But you can have somebody on behalf of the whole to inspect the stock and to remove any stock that ought not to be there?—To a certain extent that might be done, undoubtedly, but it is quite obvious that w. ere you have a great many people turning in their stock on the same ground, there is much greater risk of infection than where each has his own particular ground to put them into. Lastly, I would say that the increase of rateable value arising from the reclamation of good waste land is very considerable, and benefit is thereby derived by the neighbourhood of that waste land, inasmuch as it lessens the cost of all public rates to the other ratepayers. These are the distinctions in the purely country districts which I have ventured to state to the Committee in answer to the honourable Member's question, which the Inclosure Commissioners would draw between the two classes of regulation and inclosure.

Mr. *Leveson Gower.*

150. I want to know as to the compensation to commoners; that is not a money compensation? — No one can be compensated but by land, except by their own option.

151. Therefore that compensation is of a permanent character?—Yes.

152. Now, as a general rule, I suppose the commoners are the best judges of whether they will gain by the change, or not?—I should expect so.

153. So that in a case where a very overwhelming number of commoners are in favour of the change, it may be presumed that the change is not to their disadvantage?—I think so; and especially as there has been no dissent whatever offered in these cases.

154. Now in a case that was mentioned, of South Luffenham, although only a minority have applied, I understand that no commoner has dissented from the application?—That is so.

155. And no doubt if any commoner thought it was to his disadvantage, he would have dissented?—He had full opportunity both before the

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the Assistant Commissioner and before this Committee.

Mr. *Fawcett.*

156. Of course, before taking the step of saying to Parliament and the Home Secretary, that these inclosures and the obtaining of this Provisional Order were expedient, you have very carefully considered the documents which the Assistant Commissioner has handed in to us. That was the evidence upon which you based the opinion?—The general effect of the documents.

157. You have very carefully considered them?—Yes.

158. Do not those documents show that the very detailed questions which were sent out from your office asking why they wished the inclosure, were addressed to those persons who had applied for the inclosure?—Yes, certainly.

159. But is there any evidence whatever that a single one of those questions has ever been addressed to an independent person, who had no pecuniary or direct interest in the inclosure?—I have reason to believe that every one of those questions was addressed to the persons attending meetings which were held in the forenoon, and in the evening, in the locality.

160. I know perfectly well that anyone might come to those meetings; but any one who is aware of the social condition of the agricultural districts knows very well the torpor which very often prevails in them; and it is not right when a course is recommended by the great landowners, and people of influence in the neighbourhood, to assume that, because no one comes forward and protests, every one there is contented; it is a serious matter for a humble agricultural labourer when he finds the agents of large landed proprietors coming forward and earnestly recommending certain things, to object to them; he has never been to a public meeting in his life, perhaps, and he cannot go and say, "I object to this;" do you not think that is so?—That is possible.

161. To be perfectly certain, it is not sufficient to rest on negative evidence in coming to the conclusion that the inhabitants of the district desire inclosure; I am not referring to the commoners, because you are specially instructed by the recent Act not simply to consider the interests of the commoners, but the interests of every man, woman, or child, in the district in which the inclosure is going to take place; and, therefore, it is not fair, is it, to assume that they desire the inclosure simply upon the negative evidence that not one of them has come forward to protest against it?—We have taken every means in our power of testing it, after giving the fullest notice and publicity we were able to do.

162. I do not for a moment mean to say that you have not done all that you ought to do under the Act; but I simply want to show what security the Act gives, when faithfully carried out, for ascertaining the views of the neighbourhood; therefore, when you say that there is no opposition to it, that conclusion is simply arrived at from the negative result that no one has come forward to protest; but you have not, for instance, gone to a single independent person, and said, "Do you, who are not pecuniarily interested in this inclosure, wish it, or not"?—I have not had any opportunity of doing so.

Mr. *Fawcett*—continued.

163. Or the Assistant Commissioner?—That I cannot answer; perhaps you will examine him as to that.

164. I examine you on the documents which you say you have very carefully considered before recommending the serious step of inclosing this quantity of land; there is nothing, is there, in those documents, on which you base your recommendation, which shows that the opinion of one single person who was not pecuniarily interested in these inclosures has been ascertained?—We have taken every means which the Act points out.

165. I am not saying, for a moment, that you have not done what the Act told you to do, but I simply want to bring out clearly what you consider the Act does do; that you have virtually, thinking that you have done everything which the Act tells you to do, recommended these inclosures without the opinion of a single person who was not pecuniarily interested in the inclosure having been ascertained?—I do not say it has not been ascertained.

166. Can you point me to any particle of evidence, coming from an independent person, in the documents before us?—I can only say that every publicity was given to the proposed meetings; that a morning meeting was held, and an evening meeting was held, at which, as I understand, Parliament believed that the poorer classes would have an opportunity of presenting themselves; that that course was most rigidly followed in order to give them that opportunity, and if they failed to present themselves, and offer their views, I am afraid there is no help for it.

167. There was not a single person, was there, at those meetings except the agents and the solicitors of the large landed proprietors, and others interested in the inclosure, and one or two freeholders; there was not a single person who had not a pecuniary interest in any way who was at the meeting; do you know whether that is the fact?—Perhaps you would ask that question of the Assistant Commissioner, who presided at the meeting; I believe there were persons at the meeting representing the inhabitants.

168. I want to know this: this is the recommendation, not of the Assistant Commissioner, but you, and Mr. Ridley, and Mr. Darby, the Inclosure Commissioners, have made yourselves responsible for it; I want to know whether you did or did not ascertain whether at either of those meetings there was any single person present representing the interests of the inhabitants; or did you think it not worth while to ascertain that?—I believed that every facility having been offered for ascertaining the views of the inhabitants, our duty was fulfilled.

169. You did not think it necessary to go further into the matter?—Not when all the necessary consents were obtained.

170. You feel, I presume, that your position as acting under the old Act (because you are simply the administrators of an Act) since the new Inclosure Act had been passed, whatever your own opinions about the policy of the inclosure may be, has been altogether changed, has it not?—It has in this respect, that we are now bound to make regulation the first object where the case admits of it.

171. And before you were bound to facilitate inclosure?—That was the generally understood intention of Parliament.

172. Then

Mr. *Fawcett*—continued.

172. Then you are aware that under the present Act you are bound by the distinct words of the preamble, not simply to inquire whether inclosure will be an advantage to the agricultural productiveness of the land, but you are also bound not to recommend the inclosure, except on certain conditions, and one of the conditions that you have to consider is its tendency to promote the health, the comfort, and the convenience of the parish in which the land is situated, and the neighbourhood generally?—I have not a doubt that in the whole of these four cases now before the Committee those results will be obtained.

173. On what ground do you base that; is it on a general theory, or is it on specific facts?—Specific facts, that is to say a comparison with similar "arable fields" which have been inclosed has been got.

174. I will admit at once, I do not question it for a moment, that the net produce in the soil is considerably increased; I will admit all your arguments on that point; but what I want you to state is this, have you compared the extent to which the social conditions have been improved, or the health, comfort and convenience of any parish have been promoted, which was once an open-field parish, and is now inclosed; or have you compared the social condition of these open-field parishes with other agricultural parishes where the land is not in open field, but where the land is held, as it will be if we carry out these recommendations, entirely in severalty?—I believe the honourable Member will be able to get a specific answer to that question by a comparison between the proposed inclosure and the case of adjoining parishes which were open arable fields, and which have since been inclosed.

175. You having been instructed by the Act of Parliament to consider what effect it will have, not simply upon the agricultural produce, but upon the social condition and the general well-being of the people, have you ascertained one single fact to show that these parishes at the present moment are in a more backward social condition than other agricultural parishes; is, for instance, the rate of pauperism higher there, and is there a greater amount of crime?—I have not gone into that.

176. Then, again, let me ask you this, because your remarks, as far as I interpret them, would go straight to the inclosure of every common field in England, because they are general remarks and based on the agricultural productiveness; can you lay before the Committee any facts whatever to show what was once the condition of open-field parishes with regard to the general condition of the mass of the people, and what is their condition now that they have been inclosed?—I cannot myself do that, but since the meeting of last Tuesday, having observed that such a question might probably arise, I requested the agents in the country to examine specific cases of inclosure of open fields that were dealt with in 1858, with relation to those results which the honourable Member mentions, and witnesses here will be able to answer the question.

177. You have done that since this inquiry began, but you did not think it necessary to do it before you made these recommendations to Parliament?—It did not occur to me, because the state of the matter was so obviously in our view one which could only be met by inclosure, that, after getting the best information we could from the locality itself, we came to the conclusion that it was a fit subject to be recommended to Parliament.

Mr. *Fawcett*—continued.

178. When you speak of the great advantage of this system you express that opinion without having any facts whatever as to whether taking these people who live in Barrowden, and these people who live in Luffenham, as a whole, were not a great deal better off than the people are in many an agricultural parish, which is in this state; one large landed proprietor, two large farmers, and the rest agricultural labourers, without a bit of land to call their own, and living simply on wages for hire; you have not looked into that much?—It so happens that I did walk over Barrowden and the Luffenhams, and I found in Barrowden a considerable extent of land which I was assured by the agent he had found it impossible to let even upon the condition that the tenant should pay only the tithe, without any rent whatever.

179. The agent of one of these large landed proprietors told you that?—Yes, and I saw that the land was unoccupied.

180. But did it not strike you being there that you might do this; I should have gone to any independent person and said, "Is there much pauperism here; you have brought a serious charge against this system of open fields; is there much crime here? are these places pauper-stricken districts?" because, as far as I can gather from the documents before me, I should say in spite of the fact that the land does not produce as much as it might produce, yet the compensating advantage of giving a considerable number of people certain proprietary rights are so great that it is a very thriving community?—The information which I received was quite to the contrary effect, and there is a gentleman here who has had very long experience of this particular locality, and can speak entirely from his own knowledge, practically, as to what has been the actual state of affairs there for some considerable time back; and I think the honourable Member when he questions him will find that there is great want of progress, and that it has been, instead of a progressive, a back-going district.

181. But is this gentleman an agent to one of the large land proprietors?—Yes.

182. I should like some very different evidence from that; you did not inquire, as I understand, from the people themselves?—No, I had no opportunity.

183. And your inquiry was of the same kind with reference to specific facts; you cannot give me at the present moment any specific fact as to the amount of pauperism, which is the best test after all?—No.

184. Or as to the amount of crime?—No.

185. And that remark applies to Barrowden, North Luffenham and South Luffenham, and Riccall, and, in fact, to all these cases where you have recommended Parliament to inclose?—Yes.

186. Now, going to another part of the subject, it was not necessary, was it, in order to inclose these common fields to inclose the waste of the manor?—No.

187. They are things which might be treated separately?—Yes.

188. Such very different considerations applying to the inclosure of common fields and the waste of the manor, why did the two Commissioners mix the two things up in the same

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Mr. *Fawcett*—continued.

Provisional Order?—I answered the honourable Member, who previously asked me a question of a similar kind, that the waste of the manor in this case is very wet, covered with furze, in a very wild unproductive state, requiring a large outlay of capital in order to bring it into a state of useful productiveness, and that it seemed to us that, inasmuch as all the persons themselves interested were very anxious that it should be inclosed and subdivided, that was the plan by which the improvement of that land could be best and most advantageously accomplished. And then I also added, that it was not a place which had been a place of public resort; and that we had given notice to the largest town within six miles, that of Stamford, and they offered no objection whatever to it, as they were otherwise well supplied with recreation grounds.

189. That is a statement of the reasons which induced you to recommend the inclosure of those 390 acres instead of regulation; the point I want to come to is this, there may be Members of this Committee, or of the House of Commons, who might think it desirable to inclose these open fields, or allot them severally, but who might think it undesirable to inclose the waste of the manor; and therefore why were the two questions mixed up in one, so that the inclosure of the waste of the manor should be carried on the back of the inclosure of the common field?—I stated before, that it was only in case of inclosure that we could require an allotment for field gardens and for recreation, and that we believed that by obtaining the allotment of remarkably fine land close to the people's houses for field gardens and for recreation, it was a greater advantage to them than any advantage they could have had by keeping that waste piece of wet, unhealthy land, distant from their houses, and which was not only in an unprofitable state, but in an unsightly condition in the state in which it was.

190. I understand that there are 390 acres of waste of the manor described in Barrowden; 290 acres of which is a heath about which there is a dispute whether it belongs to Barrowden or South Luffenham; of 100 acres which is waste there is no doubt about its belonging to Barrowden; but about the 290 acres there is a dispute which parish it belongs to?—I understood it was 290 acres; but it may be as you say.

191. You say that this common is never resorted to by the public for recreation?—Such is my information.

192. But that is not borne out by the documents before us, because it is said distinctly in one part that it is occasionally resorted to for games of cricket?—It must be very rarely, I should imagine; I am speaking from information I got on the spot.

193. Whom have you got this evidence from as to the fact that this common is never resorted to for recreation, because you know in the old days we very often had similar evidence given to us which was afterwards disproved; have you got this evidence that the common is never resorted to for recreation from any single person except those who, or the representatives of those who if the land is inclosed, will receive some of it in severalty, and therefore are pecuniarily interested in this inclosure?—No doubt that is so.

194. You have rested entirely upon interested evidence. Under this new Act, which was to

Mr. *Fawcett*—continued.

increase the facilities for objection and to prevent the recurrence of what took place under the old Act, you still come and recommend inclosure, without ever getting a single fact from any person except those who are pecuniarily interested in having the land allotted in severalty?—We got the fullest information it was in our power to get.

195. From whom?—From the public meetings held in the parish.

196. But as a matter of fact, you admit the difficulty, in a rural village, of getting up a general public meeting, and one or two labourers going to protest against that which is supported by all the influential people of the district. Your instructions were these, as I interpret them: Under the Act of Parliament, to ascertain every fact which would enable you and Parliament to decide whether it was for the health, and the convenience, and the comfort of the neighbourhood that this inclosure should take place; and you thought that you had ascertained all the information that was desirable when you took the evidence from people who were pecuniarily interested?—When the Assistant Commissioner, at the morning and evening meetings, invited opinions from all without distinction.

197. But there was nothing whatever to prevent the Assistant Commissioner from getting evidence from somewhere else?—I am not aware that he did not, but you will perhaps reserve that question for him.

198. No; this is the point, you did not think it part of your duty. Looking through these documents, it struck me at once that not a particle of information had been obtained except from those pecuniarily interested (I read through the papers in a very short time). You did not think it necessary to say to the Assistant Commissioner, "Get some evidence as to the state of this waste of the manor, and as to the fact whether it is, or is not, used by people who are perfectly independent"?—Before the Assistant Commissioners went down to make the inquiries, which they have done under the new Act, we had interviews with them on the subject at the office, and the particular point of the necessity of seeing that the benefit to the neighbourhood was adequately inquired into and understood was specially pressed upon them, and we have every reason to believe that they made that the first object of their inquiry.

199. But then I am right, am I not, in saying that as far as the documents which have been laid before us, there is not a particle of evidence coming from anyone but those who are pecuniarily interested in this inclosure?—You have the evidence still to come before you of the Assistant Commissioner. If anything has failed, if we have not set forth anything which ought to have been set forth, you will have an opportunity of inquiring from the parties themselves who are here.

200. I want to have it in evidence; I may have read these papers wrong, and I should be extremely sorry to find that I had in any way misstated the case. I want you, if you doubt my assertions, to show me a single particle of evidence in the documents laid before us, except from those who have a direct pecuniary interest in these proposals; I cannot discover it myself; it may be there?—I can give you no further evidence

Mr. *Fawcett*—continued.

evidence than that laid before the Assistant Commissioner in the two meetings, and in the application.

201. You are not aware whether there is any evidence which has been obtained from independent persons?—I am not aware of who among those who attended the meetings were dependent, or who were independent persons.

202. Now, as an inhabitant of Barrowden, or as an inhabitant of South Luffenham, if I lived there, suppose I did not own any of these common fields in regard to the waste of the manor, how would my position be affected by this inclosure; I should be deprived of the right, on the one hand, to wander over these 390 acres of land which you described as in a wild state, and which are therefore probably possessed of a great deal of beauty. What should I get in return for that?—You would get a recreation ground close to your dwelling, and if you required a field garden that would be also given.

203. I should get the recreation ground; and instead of the right of being able to wander as I liked over 390 acres of wild land, I should get the privilege of walking over about four acres of land, and of renting, at the full agricultural rent, a quarter of an acre of garden ground; that is how my position would be affected as an inhabitant?—That would be so for a gentleman. But a labourer or tradesman would find an increased demand for his services.

204. With regard to this recreation ground of four acres, do not you think that four acres is a great deal too little for a recreation ground?—It is believed to be sufficient for the population of the neighbourhood.

205. Practically, if one game of cricket is being played on a ground of four acres, it is hardly safe for any others to play anything else there; for instance, supposing a cricket club is established, four acres is a very small cricket ground, even if it is square; you may hit the ball over into the midst of children playing at the end of the ground; therefore, it is very inadequate?—For the population it is believed to be adequate.

206. With regard to Riccall, nearly half of the ground at Riccall is waste of the manor?—Yes.

207. And although there you enclose over 600 acres of waste land, you still only reserve four acres of recreation ground?—Yes, and it is four acres of recreation ground close to the village, and very suitable for the people.

208. Then with regard to the amount to be reserved for field gardens, you reserve in that case 10 acres, do you not?—Ten acres.

209. Then, what the public get in that case is this, that instead of having 600 acres of perfectly open land, they have four acres of recreation ground, and they get 10 acres of field garden?—Yes, but they get 600 acres of land, which is extremely unproductive in its present state, converted into a very productive state, affording great increase of employment, great increase of produce, and great increase, I believe, of prosperity to all the neighbourhood.

210. That I know; but still, looking at the inhabitants generally, they get 10 acres of field gardens?—The inhabitants generally would also be benefited by the employment that would arise in that way.

Mr. *Fawcett*—continued.

211. But in the other case, where there were only 390 or 290 acres, 20 acres was reserved for field garden; in this case you reserve only 10 acres out of 606, in order to justify that very small reservation of ground for garden, you say that a certain amount of ground is also let by one of the landowners?—There are 12 acres, besides the 10 acres, let by a landowner, and the two together afford, as we are informed, a fully adequate supply of garden ground for all who require it.

212. But then as to this landowner, suppose the people should offend him, or that the property should change hands, or be used for any other purpose, there is not the smallest possible security that the people will perpetually enjoy it as gardens for themselves; it is simply private property which is now converted into allotment gardens; but next year it may be converted into anything else, all these being tenants at will?—That is possible.

213. Then do you think that the mere fact that a certain amount of ground is held upon the uncertain tenure of the changing opinion of a private landowner (because the property may change hands), is a reason why, when large tracts of country like 606 acres are inclosed, the poor should only have 10 acres for allotment gardens?—That was considered a sufficient amount to meet all the requirements of the inhabitants.

214. Reckoning in this 12 acres, which is private property, as exactly in the same position as 12 acres which was devoted to a purpose from which it could not be alienated?—No doubt the 12 acres were taken into consideration.

215. You have put forward, as I understand, as one of the chief arguments in favour of the recommendations contained in this Provisional Order, that it will give increased employment, and consequently lead to a very considerable increase of population?—There would be an increase; I do not know that there would be a large increase.

216. You think there would be an increase?—I think very likely.

217. And although this increase of population and increase of employment is put forward as one of the reasons why these inclosures should be sanctioned, so far as I can discover in every single case in which a reservation for a recreation ground, or for an allotment of gardens has been made, no notice whatever has been taken of this increase of population, but the reservation is simply made on the supposition of the population remaining what it is?—I believe it will be found that in most of the cases before the Committee the population has not increased.

218. I know that it is stated that the population does not increase; as far as I understand, one of the chief arguments in favour of this enclosure is this: Here are certain parishes, in which the population does not increase; inclose these lands and the population will largely increase; but you assume that the increase of population is to be a certain result and a proved advantage, resulting from the course you recommend in making these reservations of recreation grounds and allotment gardens, and you take no notice of this increase of population which you say will take place, but you think you have provided sufficiently for the wants of the people in

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providing for those now living?—The honourable Member may recollect the conditions on which these field gardens and recreation grounds are to be held for the future; any surplus that may arise is to be re-invested in improving and increasing those field gardens, and in that way very possibly it may be found that the increase may proceed at least *pari passu* with the increase of population. We do not find that the agricultural population in this country is increasing.

219. It is implied, is it not, in the Provisional Order, that the population will increase here if this inclosure is sanctioned?—To a certain extent, I have little doubt that it may.

220. But as a fact you have not taken any account of that?—Yes, the surplus that will arise from the rents which are got from this 10 acres of land are provided by the Act of Parliament to be re-invested for increasing the same advantages for the future; and if the inclosure should go on, it will soon meet that increased demand.

221. Then according to the matter of form, there will be nothing whatever to prevent this Provisional Order being taken back and revised, and presented in this form, that the proposal to inclose these common fields, and the proposal to inclose the waste of the manor, should be treated as altogether separate schemes?—The Committee have it in their power to do what they like in that respect.

222. They need not be mixed up together; there is no reason why they should be, I mean, is there?—I think there is a good reason to do it as we have advised; but it is quite in the power of the Committee to disapprove of our reasons, and adopt another course, if they think proper.

223. But there will be no legal difficulties in the way of allowing the inclosure of common fields, and prohibiting the inclosure of the waste of the manor under the conditions proposed?—None, that I am aware of.

Chairman.

224. On that I will ask, does it follow that the parties would have consented under those circumstances?—That I am really not aware; I think it would depend very much on what might be proposed.

Mr. *Fawcett.*

225. There is one more question which I am sorry to put to you, but I was examining you just now about the kind of information which the Assistant Commissioner and the Inclosure Commissioners are bound to obtain; now, if you turn to the Act, I think you will find that the Act distinctly contemplates that you should not be satisfied with public meetings, but that you should hold a public meeting and adopt any other means of obtaining information?—If we thought it necessary.

226. Then in this case you have not thought it necessary?—No.

Chairman.

227. You said you went down yourself, did you not?—That was to get a general view of the lands upon the broad question as to whether it was really a case that we ought to recommend.

Sir *William Harcourt.*

228. Have you observed that at the North and South Luffenham meetings the persons who attended were exactly the same individuals?—That is very likely; the same parties I believe are very much interested in both.

229. The meetings were held within half-an-hour of one another, I see?—The places are close together.

230. And perhaps the one meeting just walked over to the other place?—Perhaps you will ask that of the Assistant Commissioner.

Sir *Walter Barttelot.*

231. I presume you fixed these four cases because you thought that these were the cases upon which there would be the least objection of any that you could produce?—In the first place, they are the cases which of all others it is most desirable to act in. In ordinary commons the state of matters may be bad, but they are not seriously injurious as in cases such as these; and moreover, when an inquiry begins in such cases as these, where open arable fields are concerned, the persons interested all feel the desire to avoid making any expenditure on their own particular fields, because they may not, when the inclosure takes place, receive those fields again; and therefore during the period of suspense all ordinary agricultural manuring would be to a great extent suspended. Therefore that is one reason why we thought it right to press these cases.

232. Supposing this Committee think it right to throw out these four cases, should you think, in your position, that it would be advisable to recommend any more cases of inclosure?—Certainly not.

233. Then you did pick these cases because you thought they were cases as little objectionable as any that could be placed before the Committee?—We thought so.

234. Now, let us take the point of the commonable land; this commonable land belongs now to certain parties, does it not?—Yes.

235. Nobody else in the parish has a right upon that commonable land excepting those parties to whom it belongs, so long as the commonable land is under crop?—That is so.

236. After the crop is taken off, who has a right on that commonable land?—Will you be so good as to reserve that question of the Assistant Commissioner; he can answer it better than I can.

237. But so far as your knowledge of a case of that kind goes, no one in the parish except those who have rights have any rights to turn cattle out on that commonable land?—Not so far as I know; but I should like that that question should be put to the Assistant Commissioner, who has specially inquired into that.

238. And the Assistant Commissioner would also be able to say whether they did make any use of that commonable land after the crops were taken off?—No doubt.

239. Now, let me ask you a question specially with reference to what my honourable friend the member for Hackney has put to you; he says, supposing he lived in one of these places where you are going to inclose 290 acres of the waste of the manor, if he was there would he lose all his rights of going wherever he pleased over that 290 acres; I want to know, according to your experience,

Sir *Walter Barttelot*—continued.

experience, whether he has any right to go all over those 290 acres?—That is a legal question which I really, not being a lawyer, must decline to answer.

240. But from your great knowledge of this subject, and from your practical experience, you have heard the question mooted before?—I have.

241. And what was the conclusion that was come to in your mind upon it?—I have heard that the lawyers' opinion is, that the public have no rights such as are mentioned. I know nothing of it myself, but have heard that opinion.

242. But there is also this fact, that taking it as a general rule, where no harm has been done, the lords of the manor have, generally speaking, allowed people to amuse themselves upon this common?—That is so.

243. Therefore we have disposed of the right; and now comes the question of the inclosure of this land; and now I must go back for one moment to what my honourable friend the Member for Oxford said on this point; no doubt it is a great advantage to every man to keep a cow, and I see that here there is some cow pasture?—Yes.

244. Do you happen to know whether, with regard to this cow pasture, the people who have rights thereon have so many stints?—That question will be answered by the Assistant Commissioner; I am unable to answer it.

245. Nor could you, perhaps, answer whether it could be advisable, or not advisable, that those stints should still go on upon grounds that were still uninclosed and not sub-divided?—I think that would be a question of opinion in the parish.

246. But of course that ground can only carry so many stints?—No doubt.

247. And those stints are defined?—Yes.

248. Now there is another point which you may, perhaps, be able to answer as to houses without lands; have they any right upon those places?—That the Assistant Commissioner will be able to answer.

249. Now, taking the two together (because we are obliged to do so), let me ask you first, if you please, is it not a great advantage that the commonable land and the waste of the manor should both be inclosed, seeing that the recreation ground and the allotment ground will now be taken out of the commonable ground, which is close to the parish, and, therefore, much more advantageous to the inhabitants?—I have every reason to believe that they will make much more use of a recreation ground, which is close to their houses, than they have ever hitherto done of that common land.

250. Looking at this as a fair arrangement, do you think that the Assistant Commissioner has done that which is in the best interests of the general public?—I think so.

251. Do you also think that, so far as the land is concerned (speaking now of the waste of the manor), the district being a very thinly inhabited one, in the interests of the district it would be far better inclosed?—I have already so stated.

252. Now, one word with regard to the town of Stamford; was there not some difficulty at first in getting that inclosure sanctioned with regard to the town of Stamford?—It was carried by a private Act; it was not carried through the Inclosure Office under a Provisional Order.

253. Was it ever tried to be carried through the Inclosure Office?—It was one of those that were in suspense.

Sir *Walter Barttelot*—continued.

254. Then arrangements have been made and come to which have been most beneficial for the town of Stamford?—I believe there can be no possible doubt of that, but there are witnesses here who can give you the most accurate information on that point. I am told that, within seven or eight years since the inclosure took place, the value of the land has been doubled.

255. And also, you say, there is amply sufficient recreation ground for the town of Stamford?—More, I am informed, than they can make use of.

256. Now my honourable friend, the Member for Hackney, has said that you have no evidence whatever from the poorer class of the inhabitants, from those who are not pecuniarily interested or who would not have some of the land allotted to them; all those who are living there, who have houses and gardens of their own, would have land allotted to them, would they not, within the manor?—Yes, certainly.

257. All those who rented cottages, and had a right to turn out, for instance, no doubt would also get a stint given them by the lords of the manor, or whosever property it was?—Every right would be compensated under the inclosure; and in addition to the rights, the field gardens and recreation grounds are given besides.

258. You have travelled a great deal about England, and you know a great deal of what these inclosures are, and you know how the meetings are formed; is it not the general custom that at most of these meetings there is always somebody in the parish (at least I have always found it so), some man who has a little land of his own, who makes himself very busy, and takes up all these rights and claims which he thinks other people have got?—That is very often so.

259. That is, generally speaking, the rule, is it not?—I cannot say it is the rule.

260. But, so far as your experience goes, there is, generally speaking, that class of man, and that being so, do not you think that the rights of all those who are interested in these inclosures would be fully brought before the Assistant Commissioner?—I have no reason to doubt that they have been.

261. In all these inclosures, especially of the waste of a manor, proper roads and footpaths are set out for the enjoyment of the public?—Yes.

262. That is not the case now on the common?—No.

263. They would, therefore, get the benefit of having proper roads and proper paths, which, no doubt, in most instances, are very convenient and advantageous to them?—The right to set out such paths is reserved, according to what may be believed to be the special interests of the place.

264. And looking to the general question of these especially rural commons, which are, generally speaking, in a very bad state, the cultivating them, and laying out good roads and good footpaths for the people to walk about, would be a great advantage to the neighbourhood?—I do not say that in these cases so great an improvement may arise, because there are good public roads through these parishes; but whatever additional accommodation of that kind would be required

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required for the general benefit, would be attended to.

Mr. *Walsh.*

265. Sir Walter Barttelot asked you about the commonable land; can you tell me about the waste of the manor, who has the right to turn out; Sir William Harcourt alluded to a custom in some townings where each labourer has, as I understood, the right to turn out a cow; does that right exist in any one of these pastures?—The Assistant Commissioner will better answer that question than I can; he has inquired into the whole subject.

266. As a general rule, on waste of manors it is very strictly defined, is it not, who has the right of turning out?—Generally.

267. It is, generally speaking, certain landowners in certain parishes or townships who have the right to turn out on particular commons; is not that the universal rule?—That is generally so.

268. And they have only a right to turn out as much stock as they can winter on land, which gives them the right of common?—It depends on the nature of the common right.

269. That is the general rule?—Yes.

270. Therefore it could not be because the common was close to the village that it would necessarily give a right of turning out to every cottager, would it?—No.

Sir *Charles Dilke.*

271. In answer to Mr. Leveson Gower, I think you said that commoners were compensated by land, except where, by their own option, they took money?—Yes.

272. And that consequently the compensation was of a permanent nature?—Yes, if they do not sell their land.

273. They very frequently do sell their land, do they not?—Yes, very frequently.

274. And, therefore, when you said that they were the best judges of their interest under inclosure, and that by their consent to it, it was implied that it was for the benefit of the locality, it would be hardly fair, would it, to say that they have regard to the permanent interest of the locality, or even of their own families; they might be tempted by the immediate probability of gain?—That is possible.

275. Have you ever watched parishes where large inclosures have taken place, and a great number of people have received either money or patches of land as compensation for their right, and have you seen whether as a fact they did in very many cases sell their land?—That very often happens, but often also to other persons desirous of becoming small owners.

276. And it is generally the case, is it not, that the compensation is largely wasted in drink?—Very much so, I fear. But I have no specific knowledge on the point.

Mr. *Pell.*

277. There was one answer which you gave to Sir Walter Barttelot which I should like to ask you to consider again; he asked you whether all those who had houses in the parish would have allotments awarded to them, and your answer was "Yes, they would have allotments awarded to them"?—Houses with rights; I may

Mr. *Pell*—continued.

have misunderstood the question if I answered it in the form you mention.

278. Would you wish to correct that?—Yes.

279. You know what a toft is, I suppose?—Yes.

280. A toft carries right?—Yes.

281. And therefore it is not true to say that the inhabitants of parishes generally can substantiate claims to allotments?—Not unless they have rights which can be proved.

282. And which are proved before the Assistant Commissioner upon inquiry?—Yes.

283. Am I right in supposing that that inquiry is generally sufficient owing to the jealousy on the part of other owners of rights, and their insisting upon a full inquiry before a claim is substantiated?—I believe it is very carefully gone into, and all sides are heard before the Assistant Commissioner before he gives his decision as to the claim.

284. You do not think it is requisite that any public officer or philanthropist should appear to protect the interests of persons who may be entitled to allotments for common rights?—Not as between each other.

285. Then as between what we call the public, which is the public in a limited sense, limited by the late Act of Parliament, are we to understand that every notice which is required under the Act has been given to that public inviting them to come forward and make their claim?—Every notice.

Lord *Henry Scott.*

286. Are these questions which the Inclosure Commissioners address to the applicants which I see are in these papers before us drawn up by the Commissioners with the express intention of complying with the Act?—Yes.

287. Might I ask you on which of these questions do you principally rely as of a public nature; for instance, what are those which you chiefly rely upon for the purpose of ascertaining what will best conduce to the "health, comfort, and convenience of the inhabitants of any cities, towns, or villages"?—I think it must be taken from the general tenor of the questions that such facts as that must come out.

288. On looking through these questions myself, it appeared to me that while all questions of pecuniary interest were very largely and, of course, very properly attended to, and there was an absence of any particular questions which refer to this particular point, except, perhaps, Question 18, which simply refers to the question of recreation grounds?—I think all the questions in that class will be found to touch upon that point: "Is there any town green or village green in the parish or place within which the land proposed to be inclosed is situated, or any ground other than the common, available for the recreation of the neighbourhood? If so, give particulars as to area, situation, and character, and to what extent it is used by the public for recreation. Do the inhabitants of the neighbourhood resort to the common for the purposes of recreation, and is any particular part used for playing games? Is it proposed that any, and if any what, allotment should be made for a recreation ground? Is the land proposed to be so allotted conveniently situated, and otherwise suitable for the purpose? State the number of

Lord *Henry Scott*—continued.

of cottages in the neighbourhood, and whether or not they have gardens attached? Give information as to the average size of such gardens, and as to any other land now available for gardens for the poor inhabitants? Is it proposed that any, and if any what, allotment should be made for field gardens? Is the land proposed to be so allotted conveniently situated and suitable for the purposes of cultivation as gardens? Do the applicants suggest that for the benefit of the neighbourhood any of the following terms and conditions which may be applicable, should be inserted in the Provisional Order?" I should be only too glad if the Committee could suggest to us any question we may have omitted. It is very possible, because this is the beginning of a new system. We drew out these questions with the greatest care we could bestow, but we are very willing to hear any suggestions the Committee may make for their amendment.

289. I did not presume to say there had been any intentional omission, but it did strike me in reading over the Preamble of the Act, that it says that, "the protection of any public interests" was to be provided for, as well as that the interested persons they were to be looked to, and that the "health, comfort, and convenience of the inhabitants of any cities, towns, or villages," were also to be regarded, and that is put in the first part of the Preamble before the interests of those who have common rights on such lands; and therefore it struck me that perhaps there was an absence of sufficiently defined questions on that point?—The suggestion of the honourable Member seems to me a very proper one, and I shall certainly communicate with my colleagues, and if there has been an omission, we shall be very careful to make it good.

290. With regard to the question of regulation, I think you said, that there was not any power under this clause with regard to regulation to undertake anything which would lead to an end being put to strife or contention about land? I said, with regard to regulation, that it would be more difficult to isolate stock and keep them separate, and that the difficulty of keeping them separate led to strife and contention.

291. But when cattle, or sheep, or anything, are turned out on a common, there is no attempt to keep them separate, is there?—On many of the commons in the north, the farmers do try to keep them separate, and they have continual fights in endeavouring to insure that separation; and so it is in Wales. I have found lately, in one of the commons in Wales, that each farmer endeavours to have a particular part of the hills for himself, and is in constant strife about it with his neighbours.

292. But that would be contrary to the ordinary rule on which people have a right to turn out on commons; there is no right to one part more than another?—But on extensive commons in the north that is found to be the case.

293. There is no right?—No, but the right is assumed by the parties.

294. Would not that be met under this subsection 3, of clause 5, of the Commons' Act, 1876, where it says, "The making, or causing to be made, bye-laws and regulations for the prevention of, or protection from, nuisances, or for keeping order on the common"; would not that fully meet the necessities of the case?—

Lord *Henry Scott*—continued.

I fear that any person upon these hills endeavouring to keep order would find it difficult to prevent such disputes arising.

295. But where a common is regulated, and there is this distinct power given under the Act, you would not think it impossible to frame bye-laws for that purpose, would you?—No, we do not think it impossible; and we strongly recommend regulation in the more elevated districts, as being the most cheap mode by which improvement can be gained.

296. I see in sub-section 5, clause 4, there is a provision very much to the same effect; but that refers more to the determination of rights and the settlement of disputes relating to boundaries; therefore, under regulation, it would be perfectly possible to settle questions arising as to things of that sort?—You can settle questions as to the definition of rights, the number of stints, and the number of head of cattle that can be put upon the regulated common; but there may still be difficulty in satisfying individuals that others do not assume more than their right, and no doubt it will be necessary in cases of regulation, to have some means by which order can be kept.

297. Looking to these provisions which I have quoted from the Act, do you still hold to the opinion that it is absolutely necessary to resort to inclosure to regulate these matters?—No, I have not stated so.

298. Do you draw any distinct difference between the cases of Barrowden and North and South Luffenham and Riccall, or do you consider them all identical cases?—They are very much of the same character. There is a larger extent of waste of manor in Riccall than in the others. In North Luffenham there is no waste of manor; but in regard to open arable fields, they are very much the same.

299. Are there large open arable fields in Riccall?—Yes.

300. But there is a large common or waste of a manor there besides, is there not?—Yes.

301. Do not you think it would be desirable, in cases of that kind, to ascertain from those who are not interested, I mean, who have no actual right of turning out, or anything of that common right, what the general feeling of the inhabitants of those places would be, other than by those means which are laid down in these questions?—We have not thought it necessary to go beyond those meetings; morning and evening meetings. As I understand, the evening meetings were especially designed by Parliament to meet the point, that persons not having rights should have an opportunity of representing their views.

302. How long are these notices given?—Twenty-one days.

303. Do not you think it very possible that the greater number of the inhabitants really know nothing about it?—They can hardly fail to know about it, for the notices are posted all through the villages as well as in the public newspapers, and I think it most likely that it would be the subject of conversation in a small village.

304. You did not give any opinion, of course, as to any rights on a common besides the rights of those who have rights of common; but I presume that there is no question that no person merely walking over a common is subject to any

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action for trespass?—I believe he is subject to an action for trespass, but I think the damages would be very small; however, that really is a question for a lawyer.

305. You state it deliberately as your opinion that regulation would not be in any way applicable to the cases you have put before us now?—I do not think it would.

306. Not even in the case of Riccall?—In regard to the common you might regulate it, but it would be attended with nothing like the same degree of improvement that inclosure would produce.

307. Then you would partly regulate and partly inclose?—That might be done under the Act.

308. The while the field land might be inclosed the open common might be regulated as a common?—It might be, no doubt.

309. Would not that be preferable?—It would not be nearly so advantageous from the special circumstances which we have described in our report. Excluding the dam, it is soil upon which, from its nature, and in the climate, you cannot produce good grass, and in its natural state, therefore, it would be very unproductive; but it is land which is capable of conversion into tolerably good root and corn land, and therefore it would be much more productive under the one system than under the other.

310. Is it high land?—No, it is quite in a corn country.

Chairman.

311. It has been suggested that the poorer inhabitants of these places might feel some shyness in attending a public meeting, whether in the morning or whether in the evening, and stating their opinions in the face of other persons more powerful and more deeply interested than themselves; has not the Committee, through your agency, given persons of that kind another opportunity beyond that which the law has prescribed, of stating objections, or expressing a wish to be heard by means of writing a letter to the Committee Clerk?—Yes, that has been so.

312. And the intention of the Committee to receive such communications has been as widely known in the parish as the meetings themselves?—That is so.

313. I suppose you admit that your Commission, as administering the inclosure business of the country, is placed in a very different position since the passing of the Act of 1876 from what it was before?—No doubt.

314. I understand you to say, that you have loyally recognised and accepted that change, and that you have to the best of your ability founded your new mode of procedure upon the provisions of that Act of Parliament?—We have done so.

315. Your Commission, as you have already told us, does not now exist for the sole purpose

Chairman—continued.

of protecting inclosures; you have other functions to discharge?—Yes, certainly.

316. Otherwise you would have had little to do, for some years past, I take it?—We have had little to do in inclosures for some years passed.

317. Then you do not consider that it was any part of your duty, although you accepted this change, to go beyond the letter and spirit of the Act of Parliament under which you proceed?—So far as we could interpret it, but we are constantly learning, and we are very anxious indeed to hear the views on the subject of this Committee, who are more intimately acquainted with the views of Parliament than we people outside could be.

318. Then do you go so far as to say, as I understand you to say in reply to another honourable Member, that these cases are not thought fit to be proceeded with; you hardly know what cases are fit to be proceeded with?—I do not know of any others more fit for inclosure.

319. It is evident that in these particular cases you lean against the system of regulation?—Yes.

320. But you would consider yourselves bound to put forward regulation as the more desirable object of the two in accordance with the language of the Act of Parliament, I suppose, if you saw means of doing so with advantage?—Yes, certainly.

321. But as regards regulation or inclosure, are there or have there been applications before you which you have rejected, or which you think will be inapplicable, because of their flagrant want of agreement with the evident intentions of the Act?—We have not yet rejected anything, but we have withheld certain applications which we believed would not be in accordance with the principles of the Act if we allowed them as matters for inclosure.

322. Just describe an instance of such a case, and say why you think it would be useless to bring it forward?—There is an application before us for the inclosure of a piece of grass land of about 180 acres in extent, within 21 miles of the metropolis, surrounded by a very considerable population within three or four miles; and so far as my own opinion goes, that land is at this moment very productive grassland in its natural state, very well watered, held in defined quantities and stints, and except for building purposes, I really do not see what would be the advantage of inclosure there, and certainly I should not recommend it.

323. That, then, is a case in which neither for the increased productiveness of the spot, nor for the advantage of the neighbourhood, would you feel yourself justified, as at present advised, in recommending Parliament to sanction inclosure?—I should not.

Mr. Charles Wood, called in; and Examined.

Mr. *Wood.*

Sir *William Harcourt.*

324. I want to ask you as to your method of proceeding in these cases; I suppose you have no cognizance of these inclosures, as a general rule, until you receive the application?—None whatever, as a rule.

Mr. *Pell.*

325. Were you the Assistant Commissioner in all these cases before us?—Yes.

Sir *William Harcourt.*

326. The application comes in writing, I suppose,

Sir *William Harcourt*—continued.

pose, to you?—It is referred to me by the Commissioners in their printed form, with the written answers of the persons who have signed the application.

327. You send out these questions we have here, and you get the answers?—The Commissioners send them out before it comes to me.

328. And you go down to the place with these answers before you for the purpose of investigating the matters referred to there?—I do.

329. Now let me ask you as to these meetings. I observe a thing that rather struck me about North and South Luffenham, namely, that the meeting of South Luffenham took place at half-past 10 o'clock, and the meeting at North Luffenham at 11?—They are adjoining parishes, and I think that many of the same persons have land in both parishes. It was suggested that it would be convenient to hold both meetings at North Luffenham.

330. Then they were both held at the same place, were they?—They were both held at the same place.

331. Then the South Luffenham meeting was not actually held in the parish?—They were both held at North Luffenham.

332. Is not that rather an irregularity, that the meeting should not be held in the parish which is concerned?—They were adjoining parishes, and as I said, many of the same persons were interested. It was not of my own choosing that the place was fixed, at least when I say my own choosing, of course it was sent to me to fix a day, but it was suggested to me that that would be the most convenient place.

333. Who suggested that?—It was in the answers to the questions.

334. I observe as a remarkable fact, that the meetings of South Luffenham and North Luffenham were attended by identically the same persons, neither one more nor one less; in fact, it was all one meeting, I suppose?—The questions were all gone into separately, the one succeeded the other.

335. But in the same place, and with the same gentlemen present?—Most of them, no doubt, would be the same. I have given all of them in the report.

336. Most of them, I see, are distinguished solicitors; most of them probably not known by sight to the inhabitants of North Luffenham or South Luffenham. I suppose "Mr. Flux, from the office of Mr. Travers Smith," is not very familiarly known to the people of North or South Luffenham?—But I think you will find that he was attended by the estate agent of Lord Aveland, who would be well known in the neighbourhood; and I dare say Mr. Flux would be well known in the neighbourhood.

337. You would know nothing of this except for the meeting that you go to?—No.

338. Then your whole knowledge is what was derived at this half-hour meeting at South Luffenham, with regard to the merits of the case?—It was much longer than an half-hour meeting; the meetings occupied the whole of the day. In these particular cases it so happened that I had been acquainted with them before, in consequence of there having been previous applications for inclosures, but which never came before Parliament, in the cases of North and South Luffenham and Barrowden, in consequence of there being a suspension for the time of inclosure.

Sir *William Harcourt*—continued.

339. When you say that these meetings took longer than half an hour, that cannot be, I think; you see the South Luffenham meeting began at half-past 10, and the North Luffenham meeting began at 11 o'clock; so that the South Luffenham meeting was finished off in half an hour?—In point of fact the meeting took longer, and the one succeeded the other; it was done, as it was believed, to be for the convenience of the parties.

340. The convenience, I suppose that means, of the London solicitors?—There was, I think, only one London solicitor there, Mr. Flux.

341. It would be very convenient to London solicitors to have the two meetings in the same place, not in the parish concerned, so that they might get away?—They are adjoining parishes. Besides, the parties could not get away, because there was the evening meeting.

342. But I observe the same gentlemen attended the morning and evening meetings on both occasions?—Because many of them owned land in both the parishes.

343. "Many" is, perhaps, hardly the phrase; I think that the native inhabitants, as far as I can make out, amount to about three who were present at either of the meetings for both the parishes; I have taken some pains to look at these names just to judge of what a rural meeting means under the Inclosure Act; I see there was present at North Luffenham meeting, "Mr. James Flux, from the office of Mr. Travers Smith, London, solicitor for, and holding power of attorney from, Lord Aveland, lord of the manor of South Luffenham;" he is not a Luffenham person: then there is "Mr. Atter, solicitor, Stamford, steward of the manor of South Luffenham, and for Mrs. Cooper, a freeholder;" he is not a Luffenham person: "Mr. Thomas Sturgess, estate agent for Lord Aveland;" it does not say where he lives: "Mr. Richard Thompson, of Stamford, solicitor;" and then solicitors from various places?—They represent the persons interested.

344. No doubt, but I want to see how many local people appeared in these cases. Then there is "The Reverend Philip Dennis, Rector of North Luffenham;" is South Luffenham in a different parish, and is there a rector there?—I believe at the moment it was vacant; they are separate parishes.

345. Was there any curator of South Luffenham who attended at either of these meetings?—Not of South Luffenham.

346. I suppose that the Reverend Philip Dennis, Rector of North Luffenham, would probably be entitled to part of the common land in right of his glebe, was he not?—I rather think he was; I cannot say off-hand at this moment.

347. Then I see "Mr. Shields, of Uppingham, solicitor" (we have not yet come to a Luffenham man, you see, at all); then we come to "Mr. Pepper, being himself also present;" he appears to be a Luffenham man; and Mr. Mason, and Mr. Botham, and Mr. Rose, as far as I make out, those are the Luffenham people, and those are all the people that appear for both the parishes; now, can you tell me what the number of persons interested in this matter in the two

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parishes is?—I think you will find that stated on the report.

348. Therefore the number of persons locally interested on the spot, whom you had an opportunity of seeing, was very small?—That is so, except also the representatives of persons locally interested.

349. Now, I have observed it stated, I think in your report, or in one of the answers to the questions, that there were three persons who declined to join in that application; do you know why they declined;—I do not think I have any special note upon that, but I think they simply declined to interfere one way or the other; it is not unusual in inclosure for persons to say, "I will be neuter;" and having no special note of it to the contrary, I take it for granted that that was the case with them.

350. You say you had some knowledge in these cases of other persons, independently?—Only derived from similar meetings.

351. But, as a general rule, you make no inquiry whatever, except from circumstances which arise at these meetings?—As a rule, not.

352. I mean you do not think it any part of your duty to go round in the village or the parish, and ask the opinion of people about it, except so far as they appear at the meeting?—Except so far as they appear at the meeting, or if they accompanied me round the common, I should hear any expression of opinion; but, generally speaking, those only accompany me round the common who attend the meeting, and only a portion of those.

353. Do you find generally that these meetings on the subject of inclosure are numerously attended?—Not as a rule numerously.

354. As a rule they are pretty much confined, I suppose, to the solicitors?—And the owners; if there are owners of land, they are very often there, and some of the tenants are generally there, and also occasionally some of the labourers.

355. Seldom the labourers?—Not very often.

356. Who was the principal promoter of these Luffenham inclosures?—That I do not know, because that would be before it came to me.

357. But I mean who conducted the business of these meetings; will you tell me how the meeting is conducted?—The meeting is conducted in this way; there are the previous notices, which go out and have been published fully beforehand; and then at the meeting I generally take the printed form which has been sent up to the Commissioners in London, and read out to the meeting each question, and then the answer to that question; and I ask the parties at the meeting whether they agree to that being a correct answer; and I specially invite anybody to give me any further information, or to make any remarks on the answers to the questions.

358. The parties at the meeting being the people who have originally given the answers to the questions sent down?—Several of them, no doubt.

359. Do you happen to know in these cases who the answers would be drawn up by in the first instance?—I cannot say whether, for certain, by the solicitor or agent of the lord of the manor, but very probably so. I rather think it is so in these cases. I think I may say that in these cases the communication was through the lords of the manor, as far as my recollection goes.

Sir *William Harcourt*—continued.

360. Then really all that you do is to take these questions, to read them out at the meeting, and to ask whether any one objected to the answers?—And to ask for any information which they can give me on the subject.

361. But beyond that you make no further investigation as a general rule?—Unless anything arises.

362. I mean if there is a meeting for inclosure, and you read these questions out, and the people who are present say it is all right, you come away and make your report accordingly to the Commissioners?—As a rule I do.

363. I observe in the case of Barrowden that the answer to Question 8 is, that there are 290 acres of heath, and that the heath "is stocked by the inhabitants of Barrowden and South Luffenham; but disputes exist as to the proportion of the heath which either parish has a right to stock, and the stint thereon;" I cannot make out in your report that there is any special reference to this common land as distinguished from the commonable land?—Yes, I think you will find there is. It is "subject to the rights of common, which may be exercised at all times of the year for cattle, levant and couchant upon other land; also for a limited number of cattle of the owners of certain commonable messuages."

364. Then it is a right of common attached to land and to certain messuages?—And to certain messuages.

365. When that is inclosed, will you tell me as a fact what will happen to those commonable messuages, what will they get?—They will get a piece of land in compensation for their common right.

366. Let me ask you a question which has been asked of Mr. Caird before, but I should like to know your experience on it; does a small holder holding a commonable messuage, take his compensation in money or land?—I believe in land. What he would get would be an allotment in land; but if the allotment were of small value (I think at this moment it is 5*l.* or under), then with his consent, compensation in money may be paid him; therefore, generally speaking, he gets an allotment in land.

367. I see that at Barrowden, it is stated, that out of 30 people interested in this commonable land, 14 have signed the present application; did you not make any inquiry as to why the other 16 did not sign?—No; the meeting gives an opportunity for persons objecting; and why perhaps more do not attend, or more consents are not given, is this, that the Act of Parliament requires the assent by value; therefore, if the parties in the first instance get one-third of the value, which is sufficient to justify the Commissioners, if they think it right, in issuing a Provisional Order, that is sufficient for the first meeting. Then if the Commissioners, upon the report and upon the information furnished from this first meeting, think it is a case for issuing a Provisional Order, you must get the consent, before it can be presented to Parliament, of two-thirds in value; but in neither case is it a question of numbers, it is a question of value, therefore, where you find that, for instance, in these cases a smaller number appear to assent than perhaps you might have expected, it is because there

Sir *William Harcourt*—continued.

there has been sufficient assent obtained to comply with the Act of Parliament, and to justify in the first place the Commissioners issuing a Provisional Order, if they think right, and in the second instance to justify them, if they think right, in recommending it to Parliament.

368. That is to say, that the Act of Parliament cares a great deal about a few large proprietors, and very little about a large number of small ones?—That is not for me to say.

369. It appears to be so from your answer; the smallness of the number is compensated by the largeness of their holdings?—It is a question of the value interested.

370. At all events, if the parish consists of one man who has got two-thirds of the value, and there are 500 people who have got the other third among them, you have nothing to do with the 500, but only with the one?—I should not like to say that; that is a very extreme case. The Commissioners, of course, have a discretion left to them as to whether they will recommend it to Parliament; and supposing that out of such a large number, there was only one wishing it, it is quite possible that the Commissioners would exercise their discretion, and say, "This is not a case for recommending an inclosure at present."

371. As a fact, all you have to attend to, and do attend to, is to see that there is a certain value represented, irrespective of the number of persons whose interest may be affected?—If I found there was no dissent I should report it; and if I found there was a very large dissent, I should in the first place consider whether I ought to allow that to influence my judgment in recommending the Commissioners to hold their hands; and in the second place, the Commissioners would consider whether it should have an effect on their judgment.

372. When you say that in Barrowden there are 30 people affected, does that mean in respect of the commonable land or of the waste land also?—I think it means in that case both; but I think I distinguished the number of those who are interested as owners of common land.

373. It is in your remarks, on numbers 23, 24, 25, and 26, "There are about 35 persons interested, and of these 14 have signed the application"; but I do not see that you make any distinction, and I did not know whether you might have included the persons having common rights?—That would include the persons also having common rights; it would include all persons who are interested as having rights, either as owners in common fields, or as common right owners. I think in Barrowden certain commonable messuages have rights.

374. Now, passing from Barrowden to South Luffenham, you say it is doubtful whether there may not be some rights attached to houses without lands. That seems to be not only waste of the manor, but in the commonable fields?—I think it would mean the commonable fields after the crops were taken.

375. Then it is not limited to the men who have property in the commonable land itself after the crop was taken off, but it is a right of stray attached to houses also?—It was suggested that some persons would so claim.

376. Who suggested that?—It was at a meeting; one or two of the persons there; you will find that the interests are ascertained, even including all houses. It will be a question when the claims come in to be decided, whether any such persons can establish a claim. Of course, as a rule, if houses have a right of common, it is generally a stint attached to the houses. If they have yards or stables, they may have also a right of common in that way; but the most usual way when houses have rights is when there is a stint attached to the house.

Sir *William Harcourt*—continued.

377. In the case of Luffenham you have given your reasons why you think these inclosures will be advantageous, and you say, "Information to the following effect was furnished." You do not speak of your own knowledge or opinion?—No.

378. It was information furnished to you at the meeting?—Yes.

379. And by these gentlemen who are agents for the landowners?—Including them.

380. Who gave you the information, for instance, that a better tone and character would be given to the parish by inclosure?—I may say that that was generally given by the meeting; and the reason why a better tone would be given is this; that at present the land cannot be cultivated in so full a manner as it would be; that the labour is not so fully employed in the way in which it would be if it were properly cultivated; that there are disputes between the parties with reference to these divisions, and the cultivation of the open field-lands more especially, and that this has generally lowered the character of the parish compared with other parishes in a flourishing condition, and adjoining parishes where the land is well cultivated, and where they are in a more prosperous condition.

381. We had a good deal of this in the New Forest; Mr. Clutton came and told us that the people of the New Forest were people of a bad character, and that it was necessary to inclose the New Forest for that reason, which created a good deal of feeling. Who was the gentleman who told you there was a low tone and character in the parishes of North and South Luffenham; it could not be Mr. Flux, of Mr. Travers Smith's house in London, I suppose?—It was generally all the persons round.

382. You see there were hardly any people of North and South Luffenham; there were a lot of London solicitors there, but they would not know much about that. Can you tell me who gave this bad character of the Luffenhams there. I should like to know because you lay this before Parliament as one of the reasons for inclosure, that a better tone and character would be given to the parish, and you say that the parish has a much lower character than others near it which are inclosed. I should like to know which is the nearest?—I have not the statistics of the adjoining parish, but I believe it can be proved that the adjoining parish either to Barrowden or Luffenham has increased very much in value since the inclosure of open fields.

383. I want to know whether you had any sort of grounds for making this statement except the views of these solicitors?—None beyond what was obtained at the meeting.

384. And you cannot remember who told you that the Luffenhams were of a bad tone and character?—It was the information of all the persons present at the meeting.

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385. The clergyman of the parish was there, was he not?—Of one parish; the other was vacant.

Sir *William Harcourt.*

386. Is it the clergyman of the parish who thought that it was of such a bad character?—He agreed in that view.

387. He agreed that it was a parish of bad character, did he?—No, he did not use that term, nor have I.

388. What did the clergyman of the parish say about another parish being so superior to his own in consequence of its being inclosed; was that because the clergyman is one of the commoners who would benefit by this inclosure?—You will find the information in the Papers before you, and he entirely agreed in it.

389. Now, as to this inclosure giving a better tone and character to the parish, do you take any notes of what passes at these meetings at all?—Yes, I do.

390. Would you refer to the evidence about the character of the parishes?—(*The Witness referred to his notes*). It is embodied in my Report.

Chairman.

391. You have got nothing on your notes that can give us more particulars; is that so?—The Report is almost a transcript from my notes. I have no further evidence here than what is in my Report. My Report is almost a transcript of the notes on my evidence.

Sir *William Harcourt.*

392. Does it appear by your notes who gave this inferior character to the parish?—It was not one person.

393. Everybody called out; did they all with one accord shout that it was a most inferior parish?—No; but the information was taken publicly in the presence of these parties, and I especially asked them whether they agreed with it, and had any observations to make on it. This was stated by some one or two at the meeting. I have no notes as to who in particular said this.

394. Just tell me what they stated at the meeting?—The information in the three parishes is almost entirely, if not precisely, on the same footing, as you will observe from the Reports. My information with regard to the South Luffenham and North Luffenham parishes, was obtained by my reading out to them the information which had been furnished to me at the Barrowden meeting. I was informed generally that the same state of things existed, or nearly so; and I read out to them the information I had taken at the Barrowden meeting, and asked the meeting of North Luffenham and South Luffenham in each case whether that information applied equally to those parishes.

395. I should like to go a step higher up in the ladder; who was it at Barrowden who started this depreciation?—The information would be furnished by Mr. Thompson, partly by Mr. Martin, the estate agent of Lord Aveland, and partly supported by Mr. Flux, or by Mr. Sturgess, the agent of Lord Aveland.

Chairman.

396. Will you tell us what you read out in South Luffenham?—The meeting was unanimous in favour of inclosure: "That at present the open-field lands are owned in small strips, spread about, and in disconnected situations, the number of strips being 2,790" (of course the number of strips would vary in North and South Luffenham), "giving an average of less than an acre per strip (about two-thirds of an acre); that this prevents the proper cultivation of the land, and is also productive of disputes as to the boundaries and as to manner of cultivation; that, in its present state, the land cannot be properly farmed, and the owners will not lay out capital in improving or draining the land, nor, indeed, sufficient to cultivate it so as to get out of it the produce which, under proper farming, could be got; that it cannot be properly sheep-farmed in its present state, and so a profitable mode of farming is obstructed; that if inclosed, there is no doubt capital would be laid out upon the land, and its productiveness increased, and the rateable value increased." Then this I also read out, but it was said that the same state of things did not exist at the Luffenhams: "That at present in some cases it is scarcely cultivated at all, and that there is great difficulty in letting it, and some part is unlet." That did not apply to the Luffenhams, and you will not find it in the Luffenham Reports, because it was negatived at the meetings.

397. What was the passage you read out to which the North and South Luffenham people assented, as bearing on the character of the parish?—The passage which says that if inclosed there would be considerable increase in the employment of labour, both in giving more regular and fuller employment to present labourers, and in bringing other labourers into the parish, and that it would give a better tone and character to the parish.

Sir *William Harcourt.*

398. I want to know where that arose. You tell me you got it originally at Barrowden. Who supplied it originally at Barrowden. First of all it was started at Barrowden that Barrowden was a bad parish, and could be improved; then it was carried to North and South Luffenham, and they both agreed that they were bad parishes, and could be improved?—That was the information furnished at the meeting.

399. You have mentioned Mr. Thompson and Mr. Flux, and Mr. Atter; these gentlemen were all at Barrowden, and then they walked on, I suppose, to North Luffenham, and then to South Luffenham, and they all said, with one accord, "These are bad parishes, because they are not inclosed"?—That depends upon what you mean by bad.

400. That they were of inferior character to those that were inclosed?—That the tone and character were not so good as those that were inclosed.

401. These gentlemen at the Luffenham meeting were the same persons as at Barrowden, I suppose?—The Barrowden meeting was a larger one a good deal.

402. Now I suppose that gamekeepers find it a great deal easier to deal with land that is inclosed than they do with commonable land; where

Sir *William Harcourt*—continued.

where they have right of stray, where everybody can go upon 1,500 acres of land after the crops are removed, it is not quite as easy to look after game as it is when it is inclosed in separate property?—Persons prefer to keep the land open for the purpose of game; so much so that the existence of game actually prevents inclosure in many cases.

403. But we are not on moor-land here, but on corn-land, and we know that the question of game arises very much in October, September, and November, just at the very time when the crops are removed, and when it becomes very inconvenient for persons who want to keep the shooting to themselves, to have people going over that land?—There is not a word about game in my report; but inasmuch as game belongs to the owners of land, and inasmuch as the land is owned by a good many persons, the right to the game would belong to a good many persons.

404. But supposing it was inclosed, and that out of this 1,200 or 1,500 acres, one man got 1,000 acres of land inclosed, the preservation of game would be much more easy; take, for instance, this parish of Barrowden; I suppose the greater part of the land after the inclosure would fall into the hands of one of the great proprietors, either Lord Aveland or Lord Exeter; then, when it was enclosed, it would be much easier to look after the game in September, and October, and November upon that 1,000 acres so enclosed than it would be if left in its present state?—Of course, inasmuch as at present, taking Lord Exeter's case, as you have singled him out, if he has pieces of land spread round in different parts, of course if he got an inclosure with the land all in one place it would be easier. No question of game was ever raised before me.

405. They are too prudent to do that; at least if they are as discreet as I take them to be; just tell me the quantity of land that Lord Aveland would have in North and South Luffenham; I mean what proportion of the common land he owns himself?—I have not got the paper here, but the proportions will be given on that paper. It is not a paper that comes before me, excepting in special cases. You may take it that he would have a large proportion, because his interest is large. I believe there are one or two large owners in Barrowden besides; the allotments would, of course, be made in proportion to the value of the lands at present owned, and the value of the rights of common.

406. And there were one or two proprietors, if I recollect right, who owned a very large proportion of the whole?—I have not got the paper before me.

407. Now, I observe that in your North Luffenham paper you say that, "On the occasion of the meeting on application for inclosure in 1871, a petition to the Inclosure Commissioners, signed by several inhabitants of North Luffenham, for the appropriation of allotments for exercise and recreation, and for gardens for the labouring poor as convenient as possible, was handed in to me, and was forwarded by me to the Commissioners, and it is on the file of papers"; do you recollect how much they asked for them?—My recollection is that they asked for no special quantity.

408. Then, in 1871, the inhabitants of North Luffenham do seem to have taken some part in the matter?—By handing in that paper it would appear so.

409. They had become indifferent in 1876, had they, to the same matter?—I daresay it would be considered, to a certain extent, as a continuation of the former application, though everything was gone through afresh.

Chairman.

410. The application has been complied with, has it not?—Yes; various convenient public allotments have been set out in all these cases.

Sir *William Harcourt.*

411. Did you ask at all these meetings whether any attempt had been made to get more consents than were given?—I get it this way: that I ask if any have dissented or expressed dissent; then, if they have done so, the answer is accordingly. In this case it is that they have applied to three who have declined to sign. For the purpose of ascertaining the dissents, it is practically the same if persons have not signed as if they had dissented, though it is not the same exactly as regards the question of the propriety of the inclosure.

412. When you lay out field gardens, what is the sort of amount that you think ought to be given to each cottage?—There is great difficulty in deciding that; but I may say that I go over the land and also over the village, besides having also the rate-book. At the meeting I especially ask those who are present, and who generally include, or very often include persons besides the persons owning the land; as, for instance, the clergyman of the parish generally considers himself in nearly all cases the representative of the poorer inhabitants; and there are other persons present interesting themselves in the question. Then, as regards the field gardens, we ascertain what gardens are already attached to the cottages, what gardens are in the habit of being let out by owners of land in the neighbourhood, and what cottages have little or no gardens attached to them. It is extremely difficult to say how much to allow for every cottage, because it is not every cottager who will take a garden away from his house; if, therefore, you give a quarter of an acre to about the number of cottages without gardens, it allows for an increase of cottages, inasmuch as I believe it never happens that all the cottagers will take gardens at a distance from their cottages.

413. As a general rule, you think that a quarter of an acre for each cottage would be about the right thing?—In some cases, where the cottager desires it, he will probably be able to get more, for the reason I have mentioned; I do not think it will be found in practice that all the cottagers will take gardens away from their houses, and that allows of an increase of cottages and of some cottagers taking more owing to others not taking the gardens.

414. Have you allowed a quarter of an acre here, as a general rule, on an average for the number of cottages?—For those without accommodation.

415. When you say without accommodation, surely, because one landlord to-day gives allot-

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ments to labourers, you do not assume that that will necessarily take place for others, supposing, for instance, that the estate passed into the hands of another man who does not give allotments; do not you think that you ought to make some more permanent provision than that which depends upon what may be the accidental good-will of a particular landlord?—To a certain extent that is so, and so allowance is made to a certain extent in that way.

416. Without taking you into detail here, your view is that there ought to be a quarter of an acre as a general average for each cottage in the parish?—I think if a quarter of an acre was allowed for the cottages without accommodation, that would provide sufficient accommodation for the cottagers.

417. Just explain to me this answer to Question No. 8 in the North Luffenham inclosure, that "certain common rights have been exercised over it"; the whole answer reads: "A principal portion of the land proposed to be inclosed is known as the North Luffenham cow pasture. It lies within and is part of the manor of North Luffenham, of which Lord Aveland is lord. Certain common rights have been exercised over it by the inhabitants of the parish of North Luffenham and owners of ancient toft houses," &c.; now, it would appear then that over this cow pasture there is a right for the inhabitants and owners of ancient toft-houses; I should like to have your explanation on that?—That is not my answer. It will be found not to be strictly so; it is used loosely in the answer to the questions.

418. Will you explain how that is; it is stated there that the right was in the inhabitants, and the owners of the ancient toft-houses, not in the owners of the lands?—I find this in my report: "It was claimed that the soil of the cow pasture is vested in the owners of the stints, and that originally it was owned in fixed number of acres by each owner, and that so many stints went to the acre, and that the precise acres have been lost as to situation, and that the rights are now known by number of stints. On the occasion of the meeting on the application for inclosure in 1871, there was produced to me, and it was desired it should be deemed as produced at the present meeting, a copy of an old survey of 1660 by one Vincent Wing (an owner), but without it appearing under what circumstances it was taken, or where the original was (though it was said there were several copies in existence), showing the cow pasture to have been owned by several persons in several acres, in a similar manner to the open fields, and the Reverend Mr. Dennis said he had taken extracts from the terriers in the registry at Peterborough showing glebe land of so many acres in the cow pasture; under these circumstances claim to the soil as waste of the manor of North Luffenham was not pressed on behalf of Lord Aveland"; and the effect of it was that that cow pasture is deemed to belong to the stint owners.

419. The stint owners then are not the owners of the land; that is to say, they are not the people who have the right, as I understand, to reap the crop, but the commonable right over this land is in the owners of stints, which is something quite apart?—Are you speaking of the cow pasture?

420. What is the extent of the cow pasture.

Sir *William Harcourt*—continued.

As I understand, the ownership in cow pasture, the right of common over cow pasture, does not depend upon any ownership in the soil, but upon the ownership of the stints?—Originally it was the ownership of the soil, and the soil will now belong to the stint owners, for the reason that though they do not now know their own number of acres, yet the whole pasture belongs to all of them together in the proportion of the number of their stints. They originally altogether owned the soil, each having his own specified number of acres, and for convenience they agreed that an acre should represent so many stints, and being in pasture they did not care then about the position of the acres, but cared only about the number of stints, and the soil belongs to them in proportion to their stints. They had forgotten the original position of their acres, and all that was remembered was that such and such persons had so many stints, but that stint will carry with it in proportion so much of the ownership of the soil, so that altogether they own the soil amongst them, and also the stinting of it.

421. It goes with the houses; the toft-houses, at all events, have a right to these stints?—I am not aware that on this cow pasture they have any right at all; it belongs to the stint owners.

422. That is not the answer that these people give?—It is the answer that I obtained at the meeting.

423. What determines the people who have these stints?—They know it amongst themselves.

424. Does it go with the tenements?—No, it is so many acres of land, only now it goes by stints, because they have given up knowing each their own number of acres, being satisfied to own the land amongst them in so many stints, that is, in certain proportions.

Chairman.

425. Is it personal property?—No, real property.

426. Are they inhabitants or occupants in the parish, or what?—The owners of the stints, and who would otherwise have been the owners of the acres.

427. Are they inhabitants of the place?—They may or may not be inhabitants of the place.

Sir *William Harcourt.*

428. I could buy so many stints and have that right?—No doubt; supposing you went and bought eight stints, and there were 80 in that field, you would be entitled to one-tenth of that cow pasture.

429. Is it an incorporeal hereditament?—If it were a stint on a common in which the soil was in the lord, then it would be an incorporeal hereditament; but inasmuch as in this case the stint carries with it the soil, the stint owners are in fact owners of the soil.

430. What is the principal advantage to be derived from inclosing this cow pasture. Mr. Caird told us he thought that grass land, as a general rule, was just as well held together, and he gave us an instance of a common which he would not recommend to be inclosed; why should this cow pasture be inclosed?—They are inclosing the other parts in the parish; and to regulate this,

Sir *William Harcourt*—continued.

this, they would not think it worth going to the expense of laying out more upon it in its present condition.

431. How many acres is it; is there any reason why, if this inclosure is authorised, it should not be made one of the terms, that the cow pasture should have a fence put round it, and be kept as it is now for the purposes of the stints, and for the use of the people with their cattle?—What would be the advantage of keeping it so, if there is a general inclosure going on, in which all persons rights are ascertained; why keep this in stint when it is of no advantage to anybody to do so?

432. Supposing that this cow pasture is to be inclosed and divided into small portions, and a man has got one stint, what will happen to him under the inclosure?—He would get an allotment for that one stint.

433. How much would he get, do you think?—So far as the cow pasture is concerned, it would be in proportion to the number of stints.

Chairman.

434. What would the stints amount to in that cow pasture?—I do not know.

435. Do you know how many stints there are, and what the acreage of this pasture is?—I was under the impression that I had it on my notes, but I do not find it at this moment.

Sir *William Harcourt.*

436. I suppose you do not know what a stint is, or what it is worth?—Not what it is worth; I should prefer not stating that. It varies in different parts of the country; it is generally ascertained with reference to the value of the land what stint it will bear.

Chairman.

437. Would you not have formed some general notion in your own mind; if you knew this piece of cow pasture was to be divided amongst the stint-owners, you would have some idea what measurement would go to each stint?—No further than this, that it would be divided equally according to the number of stints.

438. What was your view; that each stint would be worth an acre, or half-an-acre, or what?—That I cannot tell.

Mr. *Leveson Gower.*

439. You say that in this case you made no inquiries outside these meetings?—No, no special inquiries. I may, in passing along, have made some.

440. I suppose, in a very clear case, and one in which there is no dissentient, you would not think it necessary to make as minute inquiries as in a case that was less clear?—No, I should not.

441. There might very likely happen cases in which you would think it your duty to extend your inquiries beyond what you heard at the meeting?—I might do so, but in all probability the questions would suggest themselves to me at the meeting, and I should obtain information then. I may tell you that, as regards the rights I have been asked about, there is a time coming

Mr. *Leveson Gower*—continued.

when the parties will put in their claims, and then they will be decided strictly, with a right of appeal. There is a meeting to hear these claims if they are disputed, and then they are heard and decided on evidence, and with reference to the law on the subject; and if the parties are dissatisfied, they can get a legal decision of the Superior Court upon these claims.

442. I see that the smaller meetings at North and South Luffenham were composed of five solicitors, representing a great number of freeholders, and seven freeholders, one of whom was the rector of the parish; now, would you have been justified in supposing that any statements they might have made would have been contrary to the truth, for the sake of promoting their own objects?—I think not, and I think any statement contrary to the fact would at once be corrected at these public meetings; and the larger the meeting, the greater the chance of correction; but I do not think in any case intentionally have facts been misrepresented.

443. And I suppose the statement as to the character of these two parishes was more a statement of opinion than of fact?—That is rather a broad statement. I should say it was partly a statement of facts, and partly a statement of opinion derived from those facts.

444. I did not quite understand the principle upon which you allotted these plots of ground to the different commoners; you give less to those who have grounds given them by their landlords than the others?—There is not anything actually given to them, but so much is set out to persons *ex officio* for the cottagers to have an opportunity of taking at some future time, if they wish it.

445. Then would not those who do hold these bits of land from their landlords be put at a disadvantage in relation to the others, because their land may be withdrawn from them?—It is a concession to those who have them not. The landlords ought themselves to provide the gardens; but, inasmuch as they do not do so, and they are coming to have the inclosure made, then Parliament imposes upon them this necessity of providing some cottage accommodation that was not provided before. Before the inclosure takes place the cottagers get no advantage whatever from the common; it is altogether given them new, and before inclosure; there is no right to field-gardens; therefore, whatever is given in field-gardens is a purely new gift for the benefit of the cottagers.

Mr. *Fawcett.*

446. How long have you been Assistant Commissioner?—I was appointed at the end of 1864.

447. Then you were acquainted with many of the inclosures under the old Act?—I was.

448. What I understand you to do now is exactly what you did before, namely, that you hold a meeting, and, as a general rule, you are satisfied with the information which is obtained at that meeting?—Yes; and there is a second meeting held under the Act, for the express purpose of giving an opportunity to persons who cannot attend the first one to attend the second one. I believe that was the object of the Act of Parliament

449. Still you, acting under the new Act, are

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Mr. *Fawcett*—continued.

satisfied with that information?—Satisfied with that information furnished at those meetings.

450. As a matter of fact, you are aware, because your own report shows, that every single person who was present at the meetings at which these proposed inclosures were considered was pecuniarily interested in inclosure, and would have had land allotted to him in severalty?—I think you will find that there were some tenants or occupiers who would not have it except through their landlords; and in the Riccall Inclosure, I think you will find that there were some who had no rights at all, but not many.

451. Has not your experience under the old Act shown you that in the case of people who are pecuniarily interested in the inclosure, their evidence, whether they intend to mislead or not (and we need not suppose that they intend to mislead), is often so biassed, that you cannot trust the information which you obtain from it?—I should not go so far as that. It is sometimes not given with sufficient accuracy until you come to revise it by questioning them.

452. To show the danger of the course that you are now pursuing, are you aware that, relying on information at meetings such as these, where the people were pecuniarily interested, you or other Assistant Commissioners recommended that certain inclosures should be made, and reservations made, acting upon the information that you received, and almost the whole of that information was before a Committee of this House disputed; and the result of the inquiry was that the inclosures were either stopped, or in every case a larger reservation was proposed than that which you recommended, when acting on the same kind of information that you do now?—Until inclosures were generally stayed by the House of Commons, I believe that there was no inclosure which I attended which was ever refused by the House of Commons.

453. But we did stay the inclosure, not on the general ground that we wanted to stop all inclosures, but on the simple ground that it was proved that we could not trust the information that was obtained by the Assistant Commissioners from people pecuniarily interested?—I do not feel myself able to say that.

454. You are aware of the cases of inclosure which were dealt with under the other Bill, are you not?—Some of them.

455. I will take any one with which you are acquainted; did you know anything of that Wisley case?—No.

456. Or of the Withypool one?—I think not.

457. You have read the evidence I have, no doubt; are you not then aware, that in every case in which the Committee sent for independent local evidence, from people not pecuniarily interested in the inclosure of these lands, the result of that evidence was to disprove the assertions on which the Assistant Commissioner relied, coming from the persons pecuniarily interested?—I think the evidence of the other persons may be liable to error.

Chairman.

458. Do you know the fact?—I cannot say that I know it sufficiently. I know, as a fact, that there were some alterations made, but I cannot at this moment recall the evidence to my mind.

Chairman—continued.

Mr. *Fawcett.*

459. But you know, as a fact, that in many cases, I will not say to what extent, the Committee, after hearing independent evidence from the neighbourhood, came to a different conclusion from what the Commissioners had arrived at, hearing simply the evidence of those who were pecuniarily interested?—I believe they made alterations in one or two cases.

460. And, as far as concerns the cases we have before us now, you, as the Assistant Commissioner, cannot produce to us a single piece of evidence on one of the points which you were bound by the Act to inquire into, except coming from people who are pecuniarily interested in the inclosure?—I get the information which I have obtained after all persons were invited to attend, and opportunity was given them to do so.

461. But by the Act you are particularly instructed not necessarily to rest satisfied with the evidence which you hear at public meetings, but to use all other means that may be thought desirable to obtain the information; but you still consider, do you, that you have resorted to all the other means which can be considered desirable, when you have simply obtained the evidence of the people pecuniarily interested?—In the absence of any suggestion that should lead me to suppose that the information that was given me was incorrect, in the absence of anything suggesting to me error in the evidence, I did not think it necessary.

462. Then I will direct your attention to the facts that have already been produced before Committees which have repeatedly sat on this question; again and again experience shows that if you rely solely on information given to you by people pecuniarily interested, you are misled; you admit yourself that you have been misled in consequence of doing that, and that Committees of this House have altered your decision; and you still go on doing the same?—I do not admit that I have been misled. I have given you the sources of my information. I do not mean that I stand in any peculiarly different position from any other Assistant Commissioner. I do not wish to suggest that for a moment; I am merely speaking of matters within my own cognizance.

463. You admitted that in the past, acting upon the information that you had derived from parties interested who attended these meetings, you arrived at decisions, which decisions were altered by Committees of this House, after hearing, in addition to those pecuniarily interested, evidence from independent persons?—I am aware that alterations have been made in consequence of further inquiry by the House.

464. But, being aware of that fact, you still think that you have done all that is necessary when you have based recommendations solely upon information given to you by pecuniarily interested people?—I think so, after the publication that has taken place, in the absence of anything leading up to the probability of there being anything incorrect in the evidence.

465. In some of these cases the consents were not obtained from the majority of those persons interested; although the requisite two-thirds in value was obtained, there was not a majority of the

Mr. *Fawcett*—continued.

the individuals interested?—I believe it is so in the first instance.

466. Did you, by a personal application to any one of them, or by any other means, attempt to ascertain what their opinions were?—No.

467. Where you had the fact before you that the people in the neighbourhood either were unable to obtain, or had not obtained their consent, you did not think it necessary to pursue the matter?—No; because they could have attended one of the two meetings, or they could have written.

468. With your experience, you must be aware of the fact that to oppose the great men of the district, influential people very much interested in inclosure, may be a very serious thing for a very small person, and that it is very difficult for him to go and resist their will?—Of course, it is possible to be so.

469. Do not you think that Parliament contemplated that you should do something more; because if they did not do so, why should they state in the Act that you should obtain information at this public meeting or in any other way, distinctly intimating that you should resort to other ways?—If it should be deemed necessary.

470. You were so satisfied with the information you received, for instance, about the character of these parishes, that you did not test it; I mean not simply by taking other facts, but by looking at the facts of the case; you cannot tell us how this parish of which we have heard such an evil report stands, for instance, with regard to pauperism and crime, when compared with other parishes?—No; I did not go into that inquiry.

471. And you do not know who first suggested the idea of its being a parish in a low condition, as to crime, for instance?—My report does not give it the character of a criminal population.

472. A low tone?—A lower tone; I have explained what I mean by that lower tone and character what I understood it to mean, and what I intended it to mean, in my report.

473. As I understand you had no parks at all; was there anything in the look of the parishes when you were down there, to suggest anything of the sort?—A good many of the cottages were out of repair, and since my visit in 1871 some of them have gone to ruin.

474. But you have seen similar things, no doubt, in inclosed parishes; it did not strike you as being a worse parish, did it?—In that way it struck me.

475. With regard to the condition of this 290 acres of waste of the manor, do you base your opinion as to its condition on personal inspection, or again on the evidence of these people who are interested?—I inspected the land and the parish both very carefully. I spent several hours there.

476. The waste of the manor did you inspect?—The waste of the manor as well; I went over it; it is poor land, and capable of improvement, and it is some little distance from the houses, and not much used, if at all, for recreation. I think it was stated that occasionally a game of cricket was played upon it.

477. It was stated that it was occasionally used for purposes of recreation?—Yes, but very little; so much so that it was even doubted whether it was used sufficiently to be considered as being used at all.

Mr. *Fawcett*—continued.

478. What was the character of this property, this waste of the manor. I will take the first case, Barrowden, the 290 acres of waste there; what do you remember of that?—What I remember of that is, that it was rough waste land, which in its present condition was of very little value, and which, I believe, would be improved; but that is more from evidence, because I am not land agent.

479. Why did you come to the conclusion that it could not be improved by regulation, but only by inclosure?—Because the parties would not be willing to lay out money for purposes of regulation.

480. Does that appear in the evidence?—Yes, I think you will find it stated in my report as part of the evidence.

481. How did you put it?—That they do not consider it worth while to lay out capital if it is merely in a state of regulation.

482. Who expressed that opinion?—That is the general opinion and information obtained at the meeting.

483. When you say general information, do your notes show that it is the opinion of any particular person?—No; when I say it is the information at the meeting, it is practically the information of all the parties there.

484. Is there anything to show that?—I think in these cases it was taken generally in the way that I have mentioned. In the case of Riccall, the estate agent there gave more definite evidence, and it was supported in a more definite manner by an independent agriculturist, well acquainted with the neighbourhood, not living in the parish, and having no pecuniary concern in the parish at all. He was the president of the Chamber of Agriculture.

485. I want to know what would have been the result supposing it had been put to them in this way: did you explain the Act of Parliament to them, and say that the object of the Act was to regulate, not to inclose land?—I said it was for regulation and for inclosure, and that the most important point to consider was the question whether it was advantageous to the neighbourhood, and also whether it was more advantageous for it to be done by inclosure than by regulation.

486. What do you think would be the result supposing we said that we would not allow this tract of waste land to be inclosed, but consent might be allowed for the inclosure of common fields on the condition that the waste land was regulated; there is nothing, is there, to show that that would not have been accepted?—I specially asked, and they said they did not wish regulation, and would not have it, and would not lay out the money.

487. But that, as I understand, was on the supposition that if they resisted regulation they would secure inclosure; but you have no evidence to show that supposing we said to them, "If you did not have regulation you will not get inclosure"; then they would have resisted regulation?—"Regulation would be of no use in this case, and money would not be laid out if there were only regulation; the lord of the manor objects to regulation, and all parties interested

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Mr. *Wood.*

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Mr. *Fawcett*—continued.

do so"; that is my note in the Barrowden case.

488. You cannot refer us to the evidence of any particular person who says that?—This is the statement which was made, and acquiesced in by the meeting.

489. Who made the statement?—I do not remember at this moment who in particular, but to a great extent, I think the information would be furnished by Mr. Martin, the estate agent of Lord Exeter; but it was specially put to the meeting, so as to make it, in fact, also the evidence of the other parties.

490. What does he say?—That is my note at the meeting which I have just read.

Mr. *Fawcett*—continued.

491. Then there is nothing whatever to show, but that the position of the case was simply this, that they preferred inclosure to regulation, and they thought that if they succeeded in resisting regulation, they should get inclosure; but you have no evidence to show that they would refuse to vote the necessary money to regulate this common, if it was once told them authoritatively that there was no chance of their being allowed to inclose this manor?—If inclosure were refused by Parliament, I can scarcely say what they would do; my impression is that they would probably not be willing to accept regulation.

Friday, 15*th June* 1877.

MEMBERS PRESENT:

Sir Walter Barttelot.	Sir William Vernon Harcourt.
Mr. H. Cowper.	Mr. Pell.
Sir Charles Dilke.	Mr. Sclater-Booth.
Mr. Fawcett.	Lord Henry Scott.
Mr. Leveson Gower.	Mr. Arthur Walsh.

THE RIGHT HONOURABLE GEORGE SCLATER-BOOTH, IN THE CHAIR.

Mr. CHARLES WOOD, re-called; and further Examined.

Mr. *Wood.*
15 June 1877.

Mr. *Fawcett.*

492. I DO not know whether, since I examined you last, you have had an opportunity of looking into some of the proceedings which took place under the old Inclosure Act, under the Act which was partly repealed last year; have you done so?—I have not looked into any proceedings.

493. Then you cannot give us any more information to show how very incompletely it was proved that you ascertained the wishes of the neighbourhood, namely, by simply holding an inquiry at which those pecuniarily interested in an inclosure were present?—I must leave that for the House of Commons to decide.

494. But you will perhaps remember that in some cases in which you acted, I believe, as an Assistant Commissioner, in which you held an inquiry, and in which you faithfully recorded the proceedings which took place at that inquiry, and the opinions that were expressed there. It was afterwards shown, when more independent evidence was obtained, that the evidence which you originally procured did not faithfully represent the wishes of the district?—May I ask to what inclosures you are referring?

495. I will refer to every one of those which were re-considered by Committees of this House; for instance, I will mention one case; you are aware, probably, of the result of such an inquiry as those which you have now carried on, in which only those pecuniarily interested were present. It was represented, for instance, in a case like Wisley, that only a recreation ground of two acres was required, and that no allotment gardens were required; and a Committee of this House obtained information from more independent sources, and it was unanimously decided that a very much larger recreation ground was required, and that allotment gardens were also necessary?—I was not myself at Wisley.

496. But you have heard of that case, I suppose?—Yes, I have heard of it.

497. And I correctly describe it, do I not?—The result was, no doubt, that the House of Commons did alter that upon evidence; but I was not the Assistant Commissioner in that case.

498. But you do not mean that the Assistant Commissioner was not just as competent to form an opinion on the evidence he had heard as any other Assistant Commissioner?—If I may say so, he was a most able Assistant Commissioner, I have every reason to believe.

Mr. *Fawcett*—continued.

499. And, therefore, it was a most able inquiry, considering the evidence which was obtained; but the difference in what took place is this; the Assistant Commissioner heard the evidence of those who were pecuniarily interested in the inquiry, and from that evidence made certain recommendations; a Committee of the House of Commons, besides that evidence, obtained evidence from independent people, and came to very different conclusions?—I should not myself have gone further into the question, and I scarcely know how far I ought to do so now; but as you ask me to admit that the later evidence was the better evidence of the two, I must say that, so far as my information goes, it was the more incorrect evidence of the two; and I believe the Assistant Commissioner wrote a letter or statement, which was distributed among the Members of the Select Committee, but which he had not an opportunity of doing in time to affect the result, pointing out in what way the later evidence was the more incorrect of the two. I should not myself have ventured to say so, and you must not suppose that I am placing myself in opposition to the House of Commons. The Assistant Commissioner acted upon one kind of evidence, and the House of Commons acted upon later evidence obtained; not in the same manner, that is to say, not in the presence of those who would be able to check it. The House of Commons acted on the later evidence, believing it, of course, to be the sounder evidence of the two, and they did what they did, and I bow to that decision entirely. But if you ask me to admit that the later evidence was the sounder evidence, and the more reliable evidence, I do not admit that it was. I refer to that written statement made by the Assistant Commissioner; I have no authority whatever from the Assistant Commissioner to put it in; but inasmuch as he published it himself, and would be most anxious that it should be known, I should be quite ready to put it in. I have not read it again since the last meeting, but I have it in my bag here, and if you will allow me I will hand it in to the Committee.

500. But then there were several other cases

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Mr. *Fawcett*—continued.

to which the remark you have just made, I think perhaps, does not apply. In one of these Provisional Orders, I think it was proposed that no less than 13 commons should be inclosed. A Committee of the House of Commons investigated many of those cases, and obtained this independent evidence to which I have referred; and in every single instance, although the Assistant Commissioner was examined before that Committee, and he would record all the facts he had in his possession, in every one of those instances, I believe, in which a recommendation was made, after hearing this independent evidence they came to very different conclusions from what had been arrived at before the independent evidence had been heard?—I do not know exactly to what the honourable Member is referring. Of course I have read the Report of the Select Committee of the House of Commons on Inclosures, which sat a few years ago; I do not know whether you are referring to that. That was a general inquiry into the propriety of inclosures.

Chairman.

501. Mr. Fawcett is asking you whether you know as a fact that these variations from the Report of the Commissioners were made after hearing independent evidence; do you know that?—I do not personally.

Mr. *Fawcett.*

502. But in some of these cases you were Assistant Commissioner yourself, were you not?—I do not know to what cases you refer. I was not examined before any Committee of the House.

503. For instance, the case of Withypool?—I was not in the case of Withypool. I have been concerned in other cases, but my impression is, that they have not come specially before any Select Committee of the House of Commons except on the general question.

504. With regard to the last of the proposals in this Provisional Order, namely, the one as to Riccall, I see that in Barrowden you recommend the reservation of 20 acres, and in South Luffenham of 15 acres, that is 35 acres out of 290 acres, as allotment gardens for the poor; that is the case, is it not?—That is recommended, I believe. I believe in all the three cases I had myself recommended 15 acres; but in two cases the five acres were added by the Commissioners after my Report.

505. Then I will put it in this way: the Provisional Order, as laid before us, recommends 20 acres in the case of Barrowden, and 15 in the case of South Luffenham, to be reserved for allotment gardens for the labouring poor?—That is so.

506. And that reservation is made on a waste of 290 acres, is it not?—You see it is a mixed case. It is the circumstance of there being a waste at all which gave power to the Commissioners to insist upon field gardens. I looked rather to the number of cottages and the condition of the parish, not so much to the number of 290 acres.

507. I want to get at the fact that 35 acres will be reserved out of the 290 acres; that is all the waste you had to deal with, and a certain quantity of common field?—Yes.

508. Now, with regard to Riccall, you only make a reservation out of a much larger waste,

Mr. *Fawcett*—continued.

namely, 606 acres, I think, of 10 acres for the labouring poor?—That is so.

509. And you justify that small reservation on the ground that there are already 12 acres of allotment gardens belonging to a private landowner?—That influenced me in the consideration of it.

510. Is not that rather a hazardous thing on which to justify so small a reservation, because there is not the least security whatever that this property, which belongs to a private landowner, might not change hands, and the land be devoted to different purposes?—Possibly that might be so.

511. But then if that was the case, supposing this Provisional Order was accepted as it stands, the poor, out of this very large tract of waste, 606 acres, and more than 606 acres of common, would find themselves with only 10 acres of allotment gardens that would be permanently dedicated to their use?—That would be so if the lord of the manor or the owners of lands in the parish refused the allotment gardens.

512. And, then, if he did change his mind, or the property changed hands, unless you made a larger reservation for the poor, there would be still no opportunity whatever of their obtaining a greater area of ground for allotment gardens; the thing would be past recovery, would it not?—It would be past recovery unless there might be some chance of a very small addition by the accumulation of rents; but, practically speaking, it would be past recovery, I should consider.

513. And in this large parish of over 600 acres not only is it the case that you only reserve 10 acres of allotment gardens, but you also, as in the other cases, only reserve four acres for recreation ground?—Yes; four acres as sufficient recreation ground for a parish of 795 inhabitants.

514. As I see, after looking through so many of the Provisional Orders of the Commissioners, that the amount of recreation ground reserved is four acres, however large the waste of the manor is; could you tell us what reasons induced you to fix upon the particular quantity; is that the exact size which is considered proper for a recreation ground?—So far as myself and my own intentions are concerned, I am guided principally by the population of the parish. In the earlier inclosures you must remember we had no power beyond the four acres. Then, under the new Act, the only cases which I have attended are these where the population of the parish is small, and the four acres makes a sufficient recreation ground for a small village parish population; I mean an agricultural parish population.

515. But still, taking these places, Barrowden, South Luffenham, and Riccall, they vary in many respects; the population of Barrowden is twice as large as the population of South Luffenham, I think, and the population of Riccall is very much larger than that of South Luffenham, and the size of the waste of the manor varies, and yet in each instance you reserve four acres?—Yes, because four acres for an agricultural population would seem to me to be a sufficient recreation ground; I do not know that I have fixed upon any limit, but certainly up to and beyond the limit of the population of these four parishes it would seem to be sufficient.

516. You think, generally, that four acres is a sufficient recreation ground for an agricultural parish?—For an agricultural parish of moderate population.

517. A population

Mr. *Fawcett*—continued.

517. A population like Barrowden, of 700?—A population like Barrowden.

518. Have you ever examined, yourself, what an extremely small cricket field a recreation ground of four acres would make, supposing it was all devoted to cricket?—It would make, I think, a very fair cricket ground.

519. But on a cricket ground very much larger, it is perfectly well known that you can easily hit the ball to any part of the boundary, is it not; have you looked at it from that point of view; have you gone, for instance, to any cricket ground and really seen what would be left for the rest of the people; supposing on one of these village recreation grounds of four acres, a game of cricket was being played, how much room would be left for young children, or anyone else who also wanted to carry on a game at the same time?—A cricket ground would only be used by players of the description you speak of occasionally. These recreation grounds close to the village would be used principally by the younger population, the children, and so on.

Chairman.

520. Have you considered the question of those four acres from the point of view of a good cricket ground?—From the point of view of a sufficient cricket ground for such a parish.

Mr. *Fawcett.*

521. Have you compared it with any recognised cricket ground; what I want to ascertain is this, whether you have in a haphazard kind of way simply put down four acres as a kind of chance quantity which you reserve, or have you gone, for instance, to some cricket ground, or some recreation ground, and seen how much four acres really represented, and then carefully come to the conclusion that four acres was sufficient for the recreation of such communities as we have to deal with?—I did not especially go measure and set out the four acres.

522. Have you a distinct idea of what it is?—I have a fair idea of what four acres is.

Sir *Walter Barttelot.*

523. Are these the first four proposed inclosures which you have examined under the new Act?—They are; they are the only ones.

524. Did you take special care that all the provisions, so far as you knew, of that Act were absolutely carried out?—It was my intention to carry them out, both in the spirit and in the letter.

525. Was every facility given at the different meetings that any objection to these inclosures might be heard?—I invited it over and over again several times during the course of the meeting, and I spent several hours upon the land and in the villages.

526. You took every care that no opportunity was missed of letting the people know that that was the time for making an objection, if there was any to make, to these inclosures?— They could not fail to have known that.

527. Now let me ask you, looking as a matter of fact at these particular inclosures, could you find any case in which it was more advisable that the inclosure should take place?—I cannot conceive any.

528. These inclosures consist of two classes of land?—They do.

Sir *Walter Barttelot*—continued.

529. Commonable land and waste of the manor?—With the exception of North Luffenham, in which there is no waste, unless as to a suggested question about 12 acres.

530. Now let us take the commonable land in Barrowden, and the two Luffenhams first, and I think we might here have that peculiar map and plan in, which it would be advisable for the Committee to look at?—I may say there is also a sketch attached to the Provisional Order, but I do not know whether that is here or not. (*Two plans were produced.*)

531. Now, as I understand these two maps, or plans, each of those different coloured inclosures means a separate inclosure by some bank or fence?—It represents a strip belonging to an owner, and unless they have been thrown together here and there, there would be simply a strip of grass land running between.

532. But there is a demarcation between each two?—There is a demarcation between each two, unless it may be that one owner throws some pieces together.

533. But where an owner has not thrown any pieces together there, there is a boundary between one piece and the other?—That is so.

534. Did you go carefully over those commonable lands, walk across it to see the general nature of the land?—Across it, and by the side of it, sufficiently to see it.

535. Was it pointed out to you upon the ground that the different owners' lands were very much intermixed?—It was.

536. Was it pointed out to you upon the ground that it was most inconvenient to cultivate the land in that state?—It was.

537. Was it pointed out to you that it would be of the greatest convenience for all those who had rights over that commonable land that that commonable land should be divided?—If you mean divided into severalty, yes, it was so.

538. Now let me ask you, has anybody any right upon that ground before Lammas-day, except the owners or occupiers of the property?—No one whatever has any right, except the owners of the land and the persons who have right of common over it.

539. I want to know when the land is under cultivation who have the right to go upon that land?—None but the owners of the pieces of land, the acres in field.

540. And no one has a right to use that land as a common during the time that those commonable lands are under cultivation?—Certainly not.

541. Now we will go one point further, if you please. After the land has been cleared of the crop, who have the right over that land, to turn cattle on or to use it in any other way?—That slightly varies. In the case of Barrowden the owners of the land in the open field and the owners of certain cottages in the parish have the right to turn on.

542. After when?—I think it is between the 12th of August and 6th of April. After the crops are gathered they are stocked by the owners of land in open field, and by the owners of certain commonable messuages in the parish to which stints are attached. It is occupied in parcels, and becomes commonable from the 12th of August to the 6th of April; the rest is arable, and owned by persons having a fixed number of acres.

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543. I think you are speaking now of the grass land?—I was when speaking of that from the 12th of August.

544. I want the other?—I believe I have somewhere the exact day, but it would be during the time when the crops were over. Then after the time that the crops are over, the owners of the open field and the owners of certain commonable cottages having stints attached to them can turn on to the whole of the fields. It is slightly different in Riccall.

545. Then, as I understand you, there is no one that has any right over this commonable land at any time, excepting, we will call them, the occupiers of the land and the owners of certain cottages?—That is so.

546. Supposing this commonable land to be enclosed, the owners of those cottages would get their proportion of land according to the number of stints that they might have upon that commonable land, afterwards thrown open to them?—They would, regard being had also to the actual owners of the soil; you must put them all together.

547. The owners of the soil naturally would have their full share, but that would not debar the owners of the cottages from having their share equally, would it?—Certainly not; each would get his proportion; it would be a question of proportion.

548. Now we have got so far, now let me ask you, so far as you know, have the public any rights over this commonable land?—I believe, in point of law, none whatever.

549. Then really, so far as the commonable land is concerned, it is only the owners of that property who are interested in the matter?—In point of law.

550. Now we will go to the commons; this common is waste of the manor of Barrowden, is it?—That is a matter in dispute, but it is waste of one manor or the other.

551. Supposing that that waste of the manor was not inclosed, should you be able to give that good recreation ground, and that 20 acres of land for allotment gardens, out of the commonable land?—Not a single acre of it, unless the parties themselves chose to say, "We will give it."

552. Then will it not be a very great advantage to the poorer inhabitants of those villages to have this recreation ground and this commonable land close to their own doors, as it were?—I believe a very great advantage.

553. Is not this land also very superior to the land they might have upon the common, if they had given it upon the common?—Yes.

554. And you have found that the owners of property have made no objection whatever to the way in which you have given this land near the village?—None whatever; indeed, in North Luffenham they have voluntarily given it up for the purposes of public allotments.

555. Are there not two small common greens, village greens?—In Barrowden there are.

556. Those you would also preserve?—Those also would be preserved.

557. And they would be recreation grounds?—They would be recreation grounds.

558. And would they be large enough for my friend the honourable Member for Hackney, large enough for the children to play on when games were going on on the recreation ground?—To some extent they could be used so, the larger one as a substantial one; but the smaller green would be preserved principally for the sake of keeping it open and keeping it orderly, though not without its use as a playground for children.

559. Now let us go to Riccall for a moment; where do you propose to give the cottage allotments in Riccall; on the common, or on the commonable ground?—On the commonable ground, on good land, close to the village.

560. What sort of waste land is it at Riccall?—The common at present is of little or no use, but capable of improvement, provided a considerable sum of money be expended on it.

561. The common and waste at Riccall, I see, is 492 acres of poor land, which might be improved?—Yes.

562. And the Dam pasture is 114 acres; will you explain what that Dam pasture is, whether it is good land?—I believe it is tolerably good land; it is liable to floods; that is the great objection to it; it lies low by the side of the River Ouse, and is liable to be flooded at some times of the year.

563. The River Ouse, I think, deposits good stuff, does it not, on the land; dresses it, in fact?—I cannot say to what extent it makes a deposit upon it.

564. Is this Dam pasture separated from the common land?—Yes, quite separate.

565. Is it fenced in at all?—Yes, it is fenced round. On one side, towards the Ouse, it is not fenced; but round all the rest it is fenced; and you go in at gates to it.

566. Who have a right upon that Dam pasture?—Certain common-right owners.

567. Has anybody else any right over that Dam pasture?—None but the common-right owners, and the owner of the soil, the lord of the manor.

568. It is not exactly in the same category as the waste of a manor?—It is waste of a manor; only the persons who have the right of common over it, so far as described before me, are persons who have certain common rights; the owners of common rights.

569. That is to say, they may turn out so many cattle upon this cow pasture?—They may turn out so many cattle upon it.

570. I think you told my honourable friend the Member for Hackney that you thought that the 10 acres at Riccall was sufficient for the allotments?—Sufficient for the allotments; regard being had to the circumstance that also it is the custom of the parish at present for allotment gardens to be let out by the lord of the manor.

571. Is it the custom at Riccall for each cottage to have a good-sized garden or not?—You will find, I think, that about half of them have not.

572. Do you know who the owners are of this half that have not got them; is it the lord of the manor, or are they smaller holders who have got these cottages without gardens?—I cannot say; I do not know.

573. Did the Inclosure Commissioners add any to the acres that you named at Riccall?—No, they did not.

574. They considered that they were sufficient?—I suppose so, as they have not added to them.

575. Now I want to ask you one question, which

Sir *Walter Barttelot*—continued.

which I should not have asked if it had not been for my friend Sir William Harcourt; do you think for a moment that the owners of these lands have any eye in regard to the game, and that that was one of the main reasons why they wished these inclosures?—I have no reason to believe so at all in this case.

576. You do not think that that was one of the main reasons why they were anxious to have this land inclosed?—It could not, in cases like these, be the main reason; whether it operated at all I could not say. In these cases the main reason is obvious.

577. Then your deliberate opinion and judgment, as one who has had great experience in these matters, is, that it would be for the interest of all concerned, even for the labouring class themselves, that these inclosures should take place?—I believe it would be in every sense advantageous both for public and for private interests.

Sir *Charles Dilke.*

578. What is the amount of grass land in each of the proposed inclosures?—In Riccall it is, in round numbers, 600 acres; in Barrowden, exclusive of the heath which is in dispute, it will be 292 acres in round numbers; and then there is the heath, which is Barrowden or South Luffenham, which is 291 acres more. Then in North Luffenham there is 143 acres of grass land; and in South Luffenham, exclusive of the heath, which I said before was in dispute, and which is 291 acres, there are 27½ acres of pasture, which is part of the heath, but not in dispute; and there are small strips, the precise acreage of which I have not got, mixed up in the open arable field land.

579. With regard to the questions that were put to you by Mr. Fawcett as to the recreation ground, I believe that four acres would be about 139 yards each way, about 139 yards square. Was your attention called to the fact before you began this new class of inquiries, either by the Commissioners, or by your own reading of what passed, that when the Bill of last year was in Committee a suggestion was made that the recreation ground should in no case be less than 12 acres, and that Mr. Cross objecting to that hard-and-fast line, said that he hoped that the Commissioners would give larger recreation grounds than they had done previously?—I do not recollect that. As I imagined, I followed the debates, because I felt it my duty to do so; but I do not recollect that. I gathered it to be the opinion of the House of Commons that there should be no fixed number of acres for recreation ground.

580. There was no division taken on that question; but your superiors, the Commissioners, did not, in giving you special instructions after the passing of the Bill, suggest that you should give larger recreation grounds?—No, they left it of course to my discretion in the first instance, subject to their discretion over me.

581. But they did not give you instructions on that point?—The instructions were that we should take special notice of what was desirable for public allotments. We generally call the recreation ground and the field gardens public allotments.

582. But those instructions would equally have been your instructions under the former state of the law?—Yes, but of late years there has been much more attention paid to those two subjects, and, therefore, of course our own attention was more especially directed to them. You must understand that four acres of recreation ground is not a hard-and-fast line. I have given my reason why I think it sufficient, that in an agricultural parish of a small population, a four acres' recreation ground is sufficient. Of course that is entirely a matter of judgment.

Sir *Charles Dilke*—continued.

583. I did not wish to pursue the matter further; but surely if it is desirable that cricket should be encouraged in these recreation grounds, it is desirable, not only to have regard to the size of the parish, and the number of the inhabitants, but also to the size of the piece of land on which you can play a cricket match?—Yes, but then it has also to be considered how that is likely to be wanted. A larger piece would be required for a larger number playing cricket, and for the number from which cricketers would be drawn.

584. The point I wished to bring out was that you had no fresh instructions from the Commissioners with reference to the size of recreation grounds?—No special ones beyond the circumstance that we must pay special attention, of course, to the matter.

585. Sir Walter Barttelot called your attention to the map which is behind you, and to the extreme sub-division of property shown to exist there, and, I think, in your reply, certainly in the question it was rather suggested that that must necessarily be a bad state of things, that extreme sub-division?—I should think there can be no doubt of that.

586. But I suppose you have heard of a rich agricultural country called France, and probably you are aware that the richest agricultural part of France would be represented by a map very similar to that behind you?—Of course, if you wish me, I can give my views whether it is better for us to have our land as it is, or in the agricultural condition of France. I should think it is better to have our style of agriculture than that of France, if you ask my view.

587. You would hardly think it could be assumed that production would be limited by a sub-division of property?—I cannot speak for myself, but I am told that this map (*pointing to it*) has marked upon it in black the occupancy of one man. Therefore he has to provide for labour and has also himself to inspect these pieces of land (*pointing to the map*) spread about in that kind of way, so that, speaking roughly, he can only get over his farm in a week.

588. Do you mean the occupier or the owner?—The occupier; he may be partly owner, but he is in occupation of that land.

Mr. *Pell.*

589. Had you any printed instructions given you by the Commissioners before you started on your circuit?—I had those questions which you have in the papers before you, and there were also instructions, or directions, or a summary of the Act, which were distributed, I believe, to persons who applied, and they were also sent to me.

590. Did those instructions draw attention to the difference between the recent Act and the old Act, to the points that Parliament had made a difference in?—You mean by comparing the two? I do not think it was done by that comparison.

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 591. Have

Mr. *Wood.*

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Mr. *Pell*—continued.

591. Have you a copy of those instructions, to which you refer, here?—I believe it has been already handed in to the Committee. The paper of instructions is headed, "Information and directions as to the mode in which applications for the regulation or inclosure of commons under the Inclosure Acts, 1845 to 1876, are to be made to the Inclosure Commissioners; with explanations respecting the law relating to the regulation and inclosure of commons." That was sent to me.

592. These are headed, "Information and directions as to the mode in which applications for the regulation or inclosure of commons under the Inclosure Acts, 1845 to 1876, are to be made to the Inclosure Commissioners;" were these instructions given you before you went down to Barrowden?—Yes, certainly.

593. And you conducted your inquiries with reference to those instructions?—Certainly; I read them over once or twice, sufficiently to make myself thoroughly acquainted with them.

594. Now one word with regard to some questions put to you by my honourable friend the Member for Chelsea as to the subdivision of land; he asked you generally whether you considered the subdivision of property was desirable, and I think you said, generally speaking, no?—You mean the present state of the matter; I think the present subdivision most undesirable.

595. But you did not in any way give expression to those views at the meetings, did you?—No, not until I had obtained any information that I could get.

596. Is it not true that in some parts of England the sub-division of property would be very advantageous where the land is excessively good, and light to dig, in places such as Biggleswade and the Vale of Evesham; you know those perhaps?—I know them by name.

597. You do not know that the land there is very much sub-divided as regards occupation, as minutely, indeed, as that map is, owing to the character of the soil and of the climate?—I do not know that; but if so, there would still probably be this difference between the cases, that each portion there would be fenced in, and a man could cultivate it and occupy it as he chose; whereas here the want of fences and the right of common over it for certain portions of the year would prevent its due cultivation.

598. As a matter of fact, in the case referred to, it is not divided by fences; there is a great subdivision of occupancy for the purpose of gardening?—Ah, but that is a special kind of cultivation.

599. Now with regard to this recreation ground, you have been asked about the extent of it, have you not?—Yes.

600. Whether it was sufficient for a certain game; cricket, I think, has been mentioned, has it not?—I think it is pretty nearly the only one that has been mentioned.

601. Did you consider it part of your duty, or should you consider it part of your duty, in recommending that inclosure, to confine your attention solely to the game of cricket, on the point of the size of a recreation ground?—Not solely.

602. Do you know the game of knurr and spell?—Yes; but if you were to set out a recreation ground for knurr and spell, you might set out almost a mountain.

603. Should you consider it as part of your duty if knurr and spell were the game of the locality, to set out an allotment sufficiently wide for that game to be played?—I should scarcely like to answer that question at present; it would require great consideration whether you could set out one that would be sufficient for knurr and spell, so that a knurr should never go out of the limits of that recreation ground. The case has never arisen before me.

Mr. *Pell*—continued.

604. What points do you consider in settling the size of the recreation ground; the amount of waste that you have to dispose of, the amount of population, or the character of the games played?—I rather consider the amount of population, that is to say, the necessity and convenience of the neighbourhood.

605. Have you been guided by experience in other inclosures, as to the size of the allotment you have set out for recreation here?—Where I have heard of their being set out in parishes of this description, I have not heard of their being insufficient. I think the cases where they would be found insufficient would be where there has been a larger population; and I also think, in setting out these allotments, there is this consideration, that it may well be that in a large parish of a mixed population, partly agricultural and partly manufacturing, or engaged in close pursuits, there the more important public allotment would be the recreation ground, but in purely agricultural parishes, then of the two public allotments I should rather consider that the field garden was the most important allotment. I think those are considerations with respect to which you must exercise your discretion in setting out the allotments.

606. How long has your experience been with regard to inclosures officially?—I was appointed Assistant Commissioner at the end of the year 1864; I think it was in December 1864.

607. Within your experience, has any objection been made to the allotments that you have set out for recreation?—I am not aware of any one of them having come before a Select Committee of the House; I am sure none have come before a Committee to my knowledge in which there has been objection made, except so far as the general question was concerned.

608. I did not mean before the House, but before the Inclosure Office?—I do not remember it at this moment; I will not be sure but that there have been additions made in one or two cases.

Mr. *Fawcett.*

609. None of your inclosures have been sanctioned, have they?—Yes, numbers of them.

610. By Parliament?—Yes.

611. From what year?—From the year 1864 up to the last few years when inclosures were stopped, but in the interval, up to the time when there was the general stoppage, there were many inclosures sanctioned.

Mr. *Pell.*

612. I do not want to go categorically into every inclosure with which you have been connected, but can you call to mind, either schemes which have been sanctioned, or those you have had to deal with which have not been sanctioned, by Parliament, in which the size of the allotment you thought proper and advisable to set out for the parish, has been questioned and disapproved of by anybody concerned in it?—There was one case included in the Report of the Commissioners to Parliament, but with respect to which such inclosures

Mr. *Pell*—continued.

inclosures were suspended until the passing of the late Act, where the Commissioners did add something for cottages.

613. Was any suggestion made to you by the landowners or others in any of these cases, or persons acting for small proprietors, or not, as to what the dimensions of the recreation allotment should be; I mean in these cases which we are dealing with, namely, the three in the Midland Counties and Riccall?—No objection of any kind whatever.

614. Nor from the inhabitants?—From no one whatever.

615. Not even from the inhabitants?—Not from the inhabitants.

Lord *Henry Scott*.

616. I suppose you have read the Act very carefully, have you not?—I have.

617. I want to ask you whether, when you proceeded on this undertaking, your attention was specially directed to the principal object of the Act as being for regulation of commons?—Yes.

618. Was your attention particularly directed by the Commissioners to that salient object, I would say, of the Act; I will not say the principal object, but the salient object of the Act?—Yes, it was certainly well understood as being a point to be attended to. I had no further printed instructions than those I have given in, but I had interviews and conversations with the Commissioners in which the matter was discussed, but no formal printed instructions beyond those which have been put in.

619. In these conversations which you had with the Commissioners in regard to the manner in which you should conduct your inquiries, did you receive special instructions to consider very specially in every case whether regulation was not as desirable as inclosure?—Certainly.

620. Did you have no written instructions at all given to you beyond those which you have handed in here?—None beyond those, and what the printed questions suggested.

621. This (*pointing to the paper of instructions*), is, I think, merely an abstract of the Act?—It is principally a summary, placed in somewhat different order, I think you will find.

622. In considering this matter, did you read very carefully the preamble of the Act?—I did.

623. And that part to which I called the attention of one of the Commissioners, that great regard was to be paid to "the protection of any public interests," and also to the "health, comfort, and convenience of the inhabitants of cities, towns, and villages"?—That is so; I find I have that marked.

624. I should like to know in what manner you think you specially consider that point, beyond what was laid down in this list of questions, which are answered in these Reports that you have made?—I think it necessarily follows.

625. Those questions do not very fully go into that point, do they, in your opinion?—I do not quite see how in these cases there should be much more inquiry about the health and comfort and convenience of the inhabitants. It would improve the neighbourhood, provide for increased labour, and improve the whole character of the place according to the view which I have previously expressed. That seems to me to be carrying out the Act of Parliament.

Lord *Henry Scott*—continued.

626. That would particularly affect the parties interested, would it not; it would no doubt affect the interest of parties who were holding land, if they agree together on a matter of that sort, but I am asking, rather more, with regard to other interests?—By providing recreation ground and field gardens, and by giving an impulse to the development of the parish, it appears to me that it would be an advantage to the neighbourhood; it would increase, in a certain sense, their health and comfort.

627. Do you think, in any one of these cases where, apart from the open fields, there is a considerable acreage of open pasture land when that is all inclosed and a recreation ground of four acres only left to the inhabitants, that would conduce to their comfort and their convenience and their health?—That will depend upon the situation of the open waste land and how far that has been used or would be likely to be used by the inhabitants. In these cases we find this waste land was little used, or not used at all for such purpose.

628. Do you mean that you think in a place with 636 inhabitants at Barrowden where they have the power as they have now of enjoying open land to the extent of 292 acres, the parties will be pleased when they find themselves restricted to merely four acres of recreation ground?—So far as the inclosure goes, as regards the inhabitants generally, it will make little or no difference to them, because it is not used for those purposes.

629. But in Riccall, for instance, there is a very large amount of common land, is there not?—A large amount of waste in Riccall.

630. And what do you propose to set out for recreation ground there?—Four acres close to the parish; the common is some distance from the parish, at least quite at the extreme end away from the parish; the distance is given in the Report.

631. Do you think that the people in any of these places realised that if this scheme was carried out they would be restricted to the enjoyment of four acres in each place for recreation ground; do you think that they were really aware of that?—I think so. I do not know why they should not be.

Sir *William Harcourt*.

632. How were they made aware that you were going to set out four acres?—Except those who attended the meeting, they would not be aware of it; but they were aware of the inclosure.

633. Was it stated at the meeting that the amount would be four acres?—Yes.

Lord *Henry Scott*.

634. I think you stated that you did not make much inquiry ouside the meetings themselves?—No special direct inquiries outside the meetings themselves. Of course I went round the parish attended by several persons.

635. Does it not occur to you that where, as these meetings were composed, and very properly composed of persons interested in the inclosure, you could not give any real opinion from the composition of that meeting as to what the feeling would

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Lord *Henry Scott*—continued.

would be outside on a question of this kind?—I think if there had been any feeling it would have cropped up at the meetings, and it would be well known that I was there; I was for a long time about in all parts of the parish.

636. Supposing you had placarded up that the proposal would be that the whole of this land should be inclosed, and that four acres only should be left open, do you think there would not have been any manifestation of feeling on that point?—No, I think not; the notice that they had would imply that it would be inclosed subject to whatever interests there might be in a recreation ground, or field garden; you will find that if you will look at the notice that was given.

637. Did it ever occur to you, in your Report to the Commissioners, to call special attention to the composition of the meeting?—I have done so.

638. You have given us no doubt, and the Commissioners too, all the information as to the persons there; but did it not strike you that it would have been desirable to inform the Commissioners of how few persons, other than those interested, were at those meetings?—But I put down every person's name and his character; I mean his occupation, and whether he owned land or not.

639. I observe that at Barrowden, at the morning meeting, there were 19 persons present; of those there were, I think, seven solicitors and one estate agent, and there were seven farmers and four others; at North Luffenham, I observe there were five solicitors present, one land agent, one rate collector, four freeholders, and a clergyman; at South Luffenham there were, I think, very much the same number of persons present: there were only three independent persons, I may call them, present at that meeting. I want to ask you, having regard to the composition of these meetings, whether you did not think it incumbent upon you, in your Report, to call the special attention of the Commissioners to the entire absence of any number of persons other than those specially interested in the inclosure?—No, the Report spoke for itself.

640. I think it does; but I will ask you to look at a section of the Act; I want to call your attention particularly now to the 6th sub-section of Section 11 of this Act; I see there, under the heading of "Personal Inquiries by Assistant Commissioner," these words: "The Assistant Commissioner shall also make any inquiries, and do any other acts which he may be instructed by the Inclosure Commissioners, or may think it advisable to do, for the purpose of enabling the Commissioners to judge as to the expediency of making the Provisional Order applied for; also as to the nature of the provisions to be inserted in any such Provisional Order, if made." The point I wish to put to you is this: do you think that you sufficiently complied with that in giving no further information to the Commissioners as to the composition of those meetings than you have given in those Reports?—Certainly, because I gave the information.

641. Then I understand from you besides, that you did not make any personal inquiries outside the meetings?—No; none beyond what appears on the face of my Report. In going round the parish of course a conversation goes on, but the persons who attended me round the parish were persons who were at the meeting.

Lord *Henry Scott*—continued.

642. Then if you had any special instructions on that point from the Commissioners, you would have acted otherwise, I suppose?—If they had told me to make any special inquiry, I should of course have made that special inquiry, whatever that inquiry might be.

643. Now in the case of these three inclosures, where you have reported in each case in favour of inclosure, do you think that the results would not be equally well obtained by part regulation and part inclosure?—No; because the parties are not willing to lay out the money on regulation, as they would consider it waste of money.

644. Would it not be possible, for instance, to enclose the field lands and to leave the pasture lands open?—Do you mean to regulate the pasture lands?

645. Yes?—It would be possible; but then to do so would be imposing a condition upon the parties to lay out money which they believe would be wasted money.

646. In what manner?—Because they say that regulation will not pay for the expense which will have to be incurred in improving the land and the expense of regulating the common.

647. I imagine the great object of inclosure in these cases of Barrowden, and North and South Luffenham, is the convenience of putting these what they call open fields together for the purpose of cultivating them in a better manner; is not that the case?—As regards the open fields no doubt that is so.

648. Would not all the result which is desirable for the sake of inclosure be realised by inclosing the open fields and leaving the pasture lands and the common open under regulation?—Then the parties will not go to the expense of regulating; they say the money would not be repaid them.

649. Were you here during Mr. Caird's examination?—Only on the second day, not on the first.

650. Did you hear him give his evidence as to the advantages and disadvantages of regulation and inclosure?—I think I heard him give some part of that evidence.

651. Did he not say this, for instance: "Taking first, regulation, which is the leading principle of the Act, what may be done under regulation?" That is his first question. "First," he says, "it is the cheapest mode of dealing with the land. The heavy costs really arise after the allotment and fencing of inclosures begin, and unquestionably it is much the easiest course for the Inclosure Office. That is a great argument; I mean that the fact of its being the cheapest course is a great argument in favour of regulation as against inclosure in every case in which good and adequate reasons can be shown for preferring regulation to inclosure." The Commissioner there states, I think, that it is the cheapest mode of dealing with the land; I think you stated just now that you thought the parties would not go to the expense of regulation?—Yes; because you will find that according to the evidence about Riccall Common, for instance, there the land is of such a character that the common would be of little use if it is kept as pasture, and that in order to make it valuable land you must marl it, and go to considerable expense to make it valuable; in other words, that their regulating the commons would not bring out the produce of the common.

652. You

Lord *Henry Scott*—continued.

652. You mean that when a common or a pasture land is inclosed it is necessary to be broken up?—That would depend entirely on the character of the land, and its situation. In many parts of Westmoreland and Cumberland it would probably never be turned away from pasture, and in those cases probably regulation would be the most desirable; it depends upon the character and the situation of the land, and the quality of the land.

653. But speaking of this open pasture at North and South Luffenham, is not that low pasture?—That is not waste of the manor; that is not waste land.

654. But it is open pasture land, is it not?—It is Lammas land.

655. What I mean is this, that it is not absolutely necessary that, because pasture land has to be regulated, therefore the land would deteriorate as pasture land?—No, but putting aside for the moment questions which arise as to the rights of the public on common land, these Lammas lands are really as much private property (I am not going into the case as to how far commons are private property) as land belonging to one man. The public have no right whatever over these lands; therefore where the parties themselves are desirous of having it inclosed there can be no public object that I can see in regulating it.

656. My question was simply this: you said that the expense of regulating would deter persons from doing so; I wanted to know from you, in asking you whether the open pastures could not be regulated, in what manner you thought it would be more expensive when Mr. Caird, the Commissioner, said to us the other day that the cheapest mode of dealing with land is by regulating it?—I think I rather misapprehended the point, or there is some misapprehension between us; as a general proposition, the expense of regulation would be less than that of inclosure, but in the case, say of Riccall Common, whatever money would be laid out upon it under regulation would not so improve the character of the land as to make it worth while to lay out any money upon regulation at all; if the common is to be improved it must be by a much more expensive system which can only be done under inclosure.

657. Do you speak of your own knowledge of the quality of this land as regards pasture or cultivation, or do you speak from the knowledge of others?—I speak from evidence, not my own knowledge; I am not a land agent or an estate agent.

658. Then what evidence had you before you when you made this recommendation to the Commissioners?—I had the evidence given by Mr. Coleman, who is the agent of Lord Wenlock, the lord of the manor, in the presence of the meeting. I think the number of people at the meeting was much larger than in the other cases. This evidence was given in the presence of the meeting, and I expressly invited observations from all the persons present; and also I had the evidence of Mr. Dunn, who was not interested in any way in the inclosure, and who is the President of the Yorkshire Chamber of Agriculture.

659. I did not want to pursue the question of the value of land with you, because I do not suppose that you profess to be a judge of land?—No, and I wish at once to say that if Mr. Caird, the Commissioner, has expressed views as regards the value of land or the cultivation of land, I should not, for a single moment, wish to say anything to the contrary, nor do I think I have; he is an eminent authority, but I give no opinion without the assistance of evidence upon the matter.

660. The evidence you got in the case of Riccall as to the value of the land was from Lord Wenlock's agent, and Mr. Dunn?—Yes, but that becomes the evidence of those present, because I invite everyone there if he differs from it to let me know, or if he wishes to put any questions; so that the evidence is not the evidence of one or two, but really the evidence of the meeting.

661. Then in stating to us, as you did just now, that you consider that regulation would be so expensive that the owners would not care to go in for it, you do not quite agree with the Commissioner who states that it is the cheapest mode of dealing with land?—I wish to correct myself if I was misunderstood. I never said, I certainly never meant to say, what the question implies. What I understand is this: that the parties say that any money laid out in regulation would be valueless, because you cannot make the land of much value as a pasture; that you ought, therefore, to inclose it, because by inclosing and laying money out upon it you can make it valuable land. I will, if you like, read the evidence of Mr. Dunn.

Chairman.

662. We shall probably have Mr. Dunn. Now upon this last point; you are aware, of course, that there is a very strong and remarkable expression in the Preamble of the Act of 1876 to this effect: "Whereas inclosure in severalty as opposed to regulation of common should not be hereinafter made unless it can be proved to the satisfaction of the said Commissioners and of Parliament that such inclosures will be of benefit," and so on. You remember that paragraph?—I do.

663. Have you borne that paragraph in mind as being a very striking expression of the opinion of Parliament which is to affect your conduct in all these inquiries?—A most material expression.

664. And you took pains to ascertain in all these four cases that regulation for whatever reasons were urged was not an expedient thing to recommend?—Decidedly, I did; I made it the first point.

665. I suppose you cannot oblige people to apply for the regulation of a common if they do not find it for their interest to do so?—No.

666. But the application for these inclosures must necessarily arise from persons who have an interest in causing the inclosure to be effected?—It must.

667. And you have, as you consider, fulfilled your obligation under the statute in taking care to ascertain that the regulation which the statute evidently prefers was not applicable in these cases?—I have endeavoured to do so, and I believe I have done so.

668. Now, do you draw any distinction between the three cases in Rutlandshire and the case in Yorkshire, or do they stand on all fours according to your view, with regard to the expediency of inclosure?—I think substantially they are on the same footing.

669. I suppose

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Chairman—continued.

669. I suppose we may say that the North and South Luffenham and Barrowden cases are practically one?—They are practically one.

670. And in those cases the interests at stake, if I may say so, are much closer than in the other case; I observe that in the Luffenham and Barrowden inquiries a very small attendance took place at the meetings, and practically the thing was conducted by the agents of some of the large proprietors, and by others who evidently had a proper motive in setting the machine going; but in the Riccall case, there appears to have been a much larger attendance and a much more popular interest excited; is that so?—That is so.

671. Then I ask, is it not the fact that the three cases of the Luffenhams and Barrowden stand on a somewhat different footing from that of Riccall?—So far as there were less numbers attending the meetings, it is so.

672. Then, in the Riccall case, where there was a larger interest, there was also a larger attendance?—There was a larger attendance.

673. There seemed to be peculiar reasons why the setting out of four acres for recreation ground at the Luffenhams and at Barrowden would be considered a reasonable amount; I think there was no obligation to set out any, was there?—We could have set it out in both Barrowden and South Luffenham, but not in North Luffenham.

674. Then, where as it might be said that four acres in each of those places was a liberal allowance from that point of view, might it not be said that in the case of Riccall the same amount was rather a stinted allowance of recreation ground?—There is not a very great difference in the matter.

675. But in Riccall there is a larger waste?—Yes.

676. Is not that a *primâ facie* reason why the recreation ground might have been reasonably larger?—If it were regarded in that light, no doubt it would be so; but then this must be considered, that the recreation ground is in fact set out of the open field land.

677. But at Riccall it is in respect of a much larger common right?—That is so.

678. If the Committee should be of opinion that a larger amount than four acres was reasonable to be allowed in Riccall, would that affect the arrangement, and the consents that have been given?—Technically, perhaps, it would.

Chairman—continued.

679. Perhaps you will explain more clearly how the case stands as regards the right to have recreation ground in respect of waste of a manor in the four cases?—In the case of Barrowden, there would have been waste of the manor to some extent, which would be entitled to both kinds of allotments, whether the heath was in it or not, but the acreage, without the heath, of waste would be comparatively small.

Mr. *Leveson Gower.*

680. There are greater facilities for the public to make known their objections now than there were before this last Act was passed, are there not?—Yes, for one thing, the notices are published in more places.

681. And is there any reason to suppose that the objectors in previous cases alluded to by Mr. Fawcett, whose views prevailed, would not have come forward sooner if the present facilities had then existed?—I think they would now.

682. And the object of the Act was to obviate what then occurred by the objection being at once taken?—That was part of it.

683. I suppose a recreation ground of 10 acres is a better recreation ground than one of four acres?—It is a larger one.

684. But, on the other hand, I suppose a recreation ground of four acres is better than none at all?—Yes.

685. Then I want to know if this scheme is not passed these villages will have no recreation ground, will they?—There are the open spaces, but they do not use them; they are not available.

686. But none near their door?—None near their doors.

687. In regard to the question then of granting a certain size of recreation ground, it is a question whether if you granted a very large amount you would not discourage inclosure, and the result would be that many villages would not have recreation ground which now would have them?—I think it would have that effect if the recreation grounds set out were larger than the necessities of the neighbourhood required.

Mr. JAMES MARTIN, called in; and Examined.

Chairman.

Mr. *Martin.*

688. I THINK you are Agent to Lord Exeter, are you not?—I am.

689. You are interested in the promotion of these inclosures on behalf of Lord Exeter?—Yes.

690. Especially Barrowden?—Especially Barrowden.

691. Are you well acquainted with the circumstances of the two Luffenhams?—No, only one, South Luffenham more particularly; and I cannot speak very well as to South Luffenham; we have only a very small interest in it, excepting the disputed common.

692. You do not know the locality, irrespective of your business; is that your meaning?—I know the locality.

Chairman—continued.

693. Then you can speak in that sense throughout as an agent?—Yes.

694. Will you tell the Committee whether you understand the difference between that which is described in the Act of Parliament as the regulation of commons, and that which is alluded to as inclosure in severalty?—I do not know that I do entirely; I know as to the waste of the manor, and all that; but I do not know exactly as far as the Act goes.

695. Do you know why the regulation of the commonable land in Barrowden would not be an object that you would think worth pursuing; or would you think it worth pursuing if the Committee were not inclined to assent to the inclosure?—Yes, I do understand that part of it.

696. What

Chairman—continued.

696. What have you to say about that?—Supposing that we inclose the common field lands, and that it was thought right not to inclose the waste of the manor, I do not think it would answer the purpose at all. In the first place, the evidence has gone as to the recreation ground; a great deal has been proved in that direction; you could not give a recreation ground if you inclose the commonable lands, because the poor have no right over them, and none of the waste of the manor lies within a mile of the village; and then the waste of the manor is in such a dreadful state that it is worthless as a recreation ground. It is nearly all covered with gorse and thorns, and last winter, when the hounds were there, they could only just ride over it, and many would not go across it at all, because it was wet and uneven.

697. It is nobody's duty to clear it, or improve it?—No, not in the least; neither would it be improved if left open.

698. Have you reason to know that the circumstances of the proposed inclosure were notorious in the place, and that all parties, including the poorest cottager, had the means of knowing what was going to be done?—Certainly. After the meeting Mr. Wood said he should like to see where we proposed to put the recreation ground, and the parties who attended the meeting walked round in a body to show Mr. Wood those cottages which had not gardens and those which had, and no doubt the parishioners all knew what our business was.

699. Is the inclosure of these parishes likely to be followed by a considerable expenditure of capital?—Certainly, a great amount of capital; it must be so to do any good.

700. In the way of fencing, and of farm buildings, or both?—Both, and underdraining and labourers cottages.

701. Has the delay in effecting the inclosure, to your knowledge, prevented the expenditure of this capital for some years past?—Yes, a great many years, to my knowledge.

Sir *William Harcourt.*

702. Where do you live?—At Wainfleet, in Lincolnshire.

703. How far is that from Barrowden?—Fifty miles.

704. How often do you go to Barrowden?—I have been nearly every week for all the winter; but I have lived more than half my time at Stamford, within about six miles of it.

705. You go there, I suppose, to collect rents?—More than that; I have spent nearly four days a week there all this last winter.

706. What have you been doing there?—I am Lord Exeter's agent.

707. But what do you do there?—I have had 12,000 acres of land to value.

708. You have been there valuing?—I have been there valuing, and on the general work of the estate.

709. What is the value of the land in Barrowden?—I have let some at 26 *s.* per acre.

710. Is that the highest?—That is the highest, but there is some of it in that 26 *s.* an acre that is worth 50 *s.*, and some of it worth only 10 *s.* and 15 *s.*

711. What would be in the country round about, taking the inclosed land, the sort of average value of land of a similar quality?—From 30 *s.* to 40 *s.*

Sir *William Harcourt*—continued.

712. How much grass land is there in Barrowden besides the waste?—About 300 acres.

713. Is that mostly in considerable plots?—Yes, there are 100 acres of meadow land in small plots.

714. There are 100 acres of meadow land all together?—No, not altogether, but very nearly.

715. And that is depastured by all the commoners in common, is it?—No, only after Lammas-day; then it is.

716. The owner of the soil takes the hay crop off it?—Yes.

717. And then it is depastured by the commoners?—Yes.

718. The owner is entitled to take the hay crop, and then who is to have the right; do the joint owners depasture afterwards?—The tenant of the owner takes the hay crop.

719. Is there one owner of the 100 acres?—No, several.

720. How do they determine how the hay crop is taken?—They know their own lands.

721. Of which they take the hay?—Yes.

722. And then they have a common pasture afterwards?—Yes.

723. And you say that there are about 300 acres of land in grass, besides the manor; that is additional to, and distinct from, the waste of the manor?—It is.

724. Then there are in Barrowden, at present, 300 acres of grass land and 290 acres of waste of the manor; is that right?—Yes, supposing that that 290 acres is in Barrowden; it is a disputed quantity.

725. What do you propose to do with the 300 acres of grass land when you inclose it?—The 100 will keep grass, because it is good grass land now, but the 200 acres is worthless as grass, or anything else until it is improved.

726. Do you propose to plough it up?—Yes, it has to be grubbed, in fact, first, it is so full of thorns and gorse.

727. And with regard to the waste of the manor which was in such a dreadful state in consequence of having gorse and thorns upon it, it will have to be grubbed too, I suppose?—A great deal of it.

728. You say that you took the Assistant Commissioner to point out to him the recreation ground?—We told him where we thought was the best situation; that was on the plan at the meeting; afterwards we took him and showed him the exact position of it.

729. And did you suggest to him that it should be four acres?—No, Mr. Wood suggested that to us, and I reminded him that by giving four acres in the position we had, it was equal to 12 acres on the commonable lands.

730. You and Mr. Wood agreed that it should be four acres?—Mr. Wood suggested that.

731. Was there any discussion with anybody else, except yourself and Mr. Wood?—There were other remarks made about it, but I do not remember exactly what they were.

732. And Mr. Wood said to you it should be four acres, and you agreed that that would do very well?—We said at first we thought it rather too much, considering that Stamford, which had 8,000 inhabitants, had eight acres of land, and

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Sir *William Harcourt*—continued.

the town of Stamford admits that they have four acres too much, and they have now let a portion of it to be grazed by butchers; that is the argument I based my view upon.

733. You think it is too much?—I do; but we did not go to split straws about it, because I am quite sure that it is desirable for the parish to have an inclosure, and we did not go to say that it was one acre of land too much; we did not go to put the matter in that light at all.

734. You do not wish to put it in that light now?—No, we were satisfied with what Mr Wood said; we thought he knew better than we did.

735. And if the Committee should say that they thought it should be more you would be satisfied that they knew better still?—I do not know that; I think that Mr. Wood has had more experience about it than the Committeee have. I have known him many years.

736. And he has always given satisfaction, has he?—Yes, where I have seen him.

737. As to the allotments, who settled that?—We settled it in the meeting the same as the recreation ground.

738. Who suggested the quantities?—Mr. Wood, after he had taken down how many cottages we had with gardens, and how many without, and then the allotments which are now let in gardens; and I rather disputed his figures as to the cottages without gardens.

739. You thought he gave too little in that case, did you?—No, I thought he gave the number of cottages too high, but it proved at last that he was right.

740. And you think he has given exactly the right quantity?—I do not know. I thought, as I did about the recreation ground, that he knew better than we did, and we accepted his figure.

741. What was the principle on which the allotments were given?—There were so many cottages, and he gave them a rood each; he brought out the figures, so many cottages without gardens, or only small gardens, and those were to have a fourth of an acre each.

742. Does that exclude the cottages that now have allotments gardens?—Yes, it did.

743. I see there are 68 cottages in the village, are there not?—I believe so.

744. Then, a quarter of an acre each would be 17 acres?—Yes.

745. How many acres have you given?—Twenty, and what they have now.

746. Then you have given a quarter of an acre, besides what they have now in Barrowden?—Yes, we have given 20 acres.

747. To 68 cottages?—To 68 cottages.

748. Is 68 cottages the whole of the village?—I believe so; if I remember right, we took them all out.

749. Now I see three persons are said to have declined to join in the application; why did they decline to join?—I think that is a mistake; they did not decline; there were two of them ill in bed.

750. Who filled up these answers?—I have never seen them.

751. The Commissioners sent out a paper of questions, to which answers were to be sent, and those questions and answers were read out to the meeting; do you know who filled them up?—

Sir *William Harcourt*—continued.

Mr. Wood filled them up; he read the questions out.

752. You are mistaken, I think; he had got these answers, and read out the questions and the answers, and made inquiries about the answers there; I want to know who originally filled up these answers?—I do not know. Guessing, I should say Mr. Thompson, of Stamford. I do not know though.

753. Who is Mr. Thompson?—He is Lord Exeter's solicitor. Perhaps you will allow me to make an explanation of that; it was done before I was agent in the last application; a good many of those answers were made then.

754. But this is an application made this year?—A great many of them were the same answers as before.

755. So that the new inquiry under the new Act is a return of the answers which were made under the old Inclosure Act?—That is what it was taken from.

Chairman.

756. Do you know anything about those answers?—The questions, I take it, were read out at the meeting, and Mr. Wood wrote down what the replies were, and those were the only questions I knew anything about.

Sir *William Harcourt.*

757. I understand from you that you are not the person who made the written answers to the questions sent out by the Commissioners?—No, I never saw the answers or questions either, till I attended that meeting which Mr. Wood attended.

758. You cannot tell me who was the person who sent in the answers to the Commissioners' questions?—I should say, Mr. Thompson did; but I could not swear. Mr. Thompson is here, if you wish to ask him.

759. Now there are about 30 persons interested, it is here stated, in this inclosure?—Yes.

760. Does that include the persons who have rights over the waste of the manor as well as those who have rights in the commonable land?—I believe it includes all those who have any rights; it was considered so at the meeting.

761. But there must be somebody who vouches this statement; who is it that vouches the fact that there are 30 people, neither more nor less, who are interested in this matter?—I think they are pretty well known in the village.

762. Who is responsible for the statement that the number of people interested is 30?—I believe Mr. Thompson made the statement, and Mr. Thompson is here if you like to call him. It was not disputed at the meeting.

763. It is said here that 14 people have signed the application; do you know whether any application whatever was made to the other 16 people who did not sign?—I think nearly all were seen. I know some that did not sign it were seen. I anticipate that they were all, or very nearly all, seen by the person who got the application signed.

764. He saw them all, and out of 30, 14 signed; who was the person who went round to see the persons interested, to get their consent?—Mr. Evans, I believe.

765. And who is Mr. Evans?—A partner of Mr. Thompson's.

766. He went round and saw everybody who

is

Sir *William Harcourt*—continued.

is interested in the matter?—I believe so, but I should not like to say that.

767. What you propose there under that inclosure is that of course it should be thrown into convenient farms; is that so?—Yes, convenient occupations, different sized farms.

768. And the grassland will be severed, I suppose?—No, all the farms would have to have some of the grass.

769. And the common you say would be grubbed?—Yes.

770. In Barrowden, I forget how that was; is Barrowden a place where there are cottagers who have rights upon the commonable land without having any ownership in the land itself?—They get their rights from the cottages.

771. There are some who get their rights from the cottages?—Yes.

772. That is to say, that the occupants of the cottages have a right to stray after Lammas-day?—Certain cottages.

773. How is that defined?—It is known by an old right; it is known in the old books.

774. It is in the terrier, that there are certain houses who have the right upon the land, having no ownership of the land itself?—They have portions of land, not much more than the house; three or four of them have, but now they have very little occupation, because the common is not worth putting the cow on.

775. But I am talking of the other point; we were told that there were some parts of these inclosures or lands to be inclosed where persons in right of houses had a right to turn out their cattle, not only upon the waste of the manor, but upon the commonable land after Lammas-day?—Yes, after Lammas-day. All the 30 parties, if there are 30, have a right to turn their cattle over the land after Lammas-day.

776. Some of those are not owners of the land at all?—I am not sure about that; I believe three or four of them have no land.

777. What is the amount of cattle turned out upon this Lammas land?—It is very little indeed now to what it used to be; very few. Formerly the common was worth more to stock than it is now, and the cottagers and farmers all kept more cattle; but now before the Lammas land is open the commonable land is not worth stocking.

778. How do you mean "the commonable land"?—The waste land, the waste of the manor.

779. But when the Lammas land is open there is good pasture?—Yes; good pasture land.

780. It is very fair pasture on that Lammas land, is it not?—Yes it is; some of it, the meadow land is very good.

781. All this land is now open, so that anybody can ride or walk about on it after the crops are off?—Yes, they can, but not legally. That is a very unfortunate part of the business, that the farmers cannot sow turnips, because the other parties' stock would run all over it.

782. But there is nothing to prevent anybody who likes from riding over it?—Of course there are no fences.

783. Do you know any method by which you could prevent people from walking or riding over this Lammas land?—There has been a very good preventive this last winter; it has been too wet to ride over.

784. That must have delighted your heart?—No, the other way.

Sir *William Harcourt*—continued.

785. Anything that prevented people from riding or walking over land would be satisfactory to you, would it not?—No; I wanted to ride over it myself and could not, because the land was in a bad state.

Mr. *Fawcett.*

786. Who do these cottages at Barrowden belong to?—A great many belong to Lord Exeter and several to other parties.

787. Do a majority belong to Lord Exeter?—Yes, they do.

788. On what tenure are these cottages held?—A yearly tenancy.

789. So that they are to a great extent dependent for their homes upon the will of Lord Exeter?—Certainly, subject to a six months' notice.

790. I do not for a moment mean to suppose that Lord Exeter would give them notice to quit; but still they are only tenants on six months' notice?—Yes, they are yearly tenancies.

791. I understand that you have been closely connected with the land in the neighbourhood; you have valued 12,000 acres of it; you know the condition of this parish very well?—Yes.

792. How does it stand socially compared with other parishes in which there is no open land?—Very badly.

793. How do you prove that?—In the first place, I think the best proof is that the population has decreased, and all the others have increased.

794. There would be a difference of opinion on that; but I daresay as an agent, being interested in the rates, you know the pauperism of it?—No, I do not know much about the pauperism, because we do not pay any poor rates in it; that is a tenant's question.

795. Still, as an agent, in letting land you have also to consider the poor rates, because the higher the rates the less rent you can get for the land?—Yes; but that does not affect the question quite so much as it did before the last Poor Law Act.

796. You know that if you are valuing a farm, one of the first things you do in trying to fix what rent a tenant can fairly pay is to ascertain what rates he has to pay?—Yes.

797. Therefore, you must in valuing this land have ascertained the rates upon it; you know the rates, do you not?—Yes, they are ordinary rates, I believe, so far as I know.

798. Then you have no evidence whatever with regard to this district of Barrowden and the Luffenhams, and there is nothing in your figures to show you, nothing in the information you have to show you, that Barrowden and the Luffenhams, which have been described as in a low condition, have more pauperism than other districts?—No. In Barrowden there is a worse class of labourers than there is in the adjoining parishes.

799. A class who are more difficult to manage, do you mean?—No, not that exactly; they are a worse class of labourers, because they have employment which is precarious; the land not being inclosed, the farmers have no work for them in the winter time; the consequence is, that the best labourers will not stop in the parish.

800. Many of these people here are small

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Mr. *Fawcett*—continued.

property owners themselves; 30 out of comparatively a small population?—Thirty out of 700.

801. You say there are only 68 cottages in the place?—Yes, I believe so.

802. And owing to this tenure of land which has prevailed, there are 30 who own property?—No; there are 68 cottages, but there are several farmhouses besides.

803. Then there are 68 cottages and an unusual number of small farmhouses, I suppose?—Yes.

804. Therefore, in that respect, it rather represents a contrast to other villages where the land is inclosed, where there are about the same number of cottages and one or two large farms. You know many cases in which the 2,000 acres of land would be occupied by two or three farms?—I know cases where it would be occupied by one, but in this district it is not so.

805. Were you one of the persons who informed Mr. Wood that the people of this parish were in the low condition he described them as being in?—I dare say I was one of them, and conscientiously so too.

806. You do not think they are such good labourers, but you have no facts to show that there is more pauperism than in other parishes?—No, I have not.

807. Have you any facts to show that there is one bit more crime in this parish than in inclosed parishes of the same character?—No, I have not that, but in going round the cottages I can see they are not so well off as they are in adjoining parishes.

808. If they are not so well off, and if there is not more pauperism, they must be so independent that they make a great struggle to keep themselves off the rates; is not that so?—Some men of the labouring class pay money into the bank, but these men, I am sure, only have a very small subsistence.

809. That would be inevitably shown in the statistics of pauperism, unless you suppose that these people make a greater effort to keep themselves from the rates than others, would it not?—No, I do not think so.

810. What other better test can you have than the extent of pauperism?—Up to the railway coming about two years ago, there were several houses unoccupied in this village, but since that several railway men have come, who have filled the cottages.

811. You say the number of cattle have declined in the place; what is the cause of that?—Because the common is not worth grazing.

812. Why used the common to be worth grazing, and why is it not so now?—The thorns and gorse were not so abundant as they are now; they will increase.

813. That shows that it is not from the character of the land that the common is not worth grazing, but what it wants is more care and attention?—Yes.

814. Therefore, if the waste were properly attended to and looked after, it would again become land on which cattle, as of old, could be grazed?—It should be cultivated first.

815. But it used to provide grazing?—I have no doubt it was a great deal better than it is now.

816. Are you intimately acquainted with the Inclosure Act?—No, I could not say I am with the Act.

Mr. *Fawcett*—continued.

817. Have you ever read it?—No, I have not.

818. Do you know the provisions in it with regard to inclosure; who explained it to you?—Mr. Wood explained it in asking the questions, and in speaking on the few matters we asked him about. I do not know anything else.

819. In this case you resisted the proposal to regulate the common?—Yes, I certainly should.

820. But then, while resisting a proposal to regulate the common, you have never seen, from first hand and from the Act itself, under what conditions the regulation can be carried out, and what a regulation scheme might do for the common; you have never taken the trouble to read the Act?—No, I have not.

821. Your feeling against regulation has simply been formed after hearing a description of it from Mr. Wood?—That is so.

822. Now when you say you are against regulation, what you mean is this: I suppose that you prefer inclosure, such a scheme as that now before us, to any scheme of regulation?—Yes, I should; I think regulation would be a great injustice to the poor people; in the first place, we give them their recreation grounds and garden allotments close to the village, within 100 yards or 200 yards of their own houses.

823. But you are aware that that injustice you speak of is not without a remedy, because, in the very case before us now, the adjoining parish of North Luffenham, they are apparently there so anxious to get inclosure, that although there is no waste of the manor, they will still give a recreation ground and allotment gardens of about the same size as you have given in Barrowden; therefore the injustice you referred to is not one without a remedy?—Quite so; there is a remedy, certainly; but I think they ought to have an equivalent.

824. I understand that you prefer inclosure to regulation?—Yes, certainly.

825. But supposing you found that the feeling of Parliament was so strongly in favour of regulating a portion of this common, for instance, that they would be prepared to say, "Well, you may inclose the common field, but on the condition that you should have some scheme for regulating this 100 acres of good pasture, so that it should not be allotted in severalty, and you should have some scheme to restore the common to that improved condition in which you said it was when it used to graze a considerable number of cattle;" would you, under those circumstances, resist such a scheme as that?—I cannot see, in my own mind, that it would answer at all.

826. The great advantages which are attributed to this particular proposal are, that it enables people to introduce improved agriculture on the common field land?—Yes.

827. And all those advantages, under such a scheme as I have suggested, would still be enjoyed?—I think it would be done better by private individuals.

828. But you misunderstand me; supposing this was put to you: "You shall inclose the common fields, and allot them in severalty; but the 100 acres of low pasture in Barrowden shall be regulated, and something shall be done to improve the waste;" would you rather reject a scheme like that?—I think we should; we should prefer the whole; and I think it would be better for the parish altogether.

829. You

Mr. *Fawcett*—continued.

829. You prefer the scheme now before us?—Yes, I do.

830. That is another question; would you resist the scheme which I have suggested, and say that you would rather let things stop as they are?—I think we had better do so, for it would sooner be brought into a different form, all parties would be tired of it; there would be some arrangement made soon, I know.

831. Why do you object to such an arrangement as I suggest?—I think it is not practicable. In the first place, we offer to give 60 acres of commonable land to the poor for allotment.

832. Sixty acres, do you say?—Yes, it is 60 of their own lands, because the land that we give them is worth treble the waste of the manor; therefore it is 60 really of their own lands. If you take a regulation of the common, you cannot expect us to give that 20 acres of the very best land of the parish for allotments, and four acres for recreation.

833. No, that is not the point; I am not proposing that. Why do you think a scheme impracticable which would allow the commonable land, the common field land, to be allotted in severalty (I do not say what the reservations would be), and allow the cow pasture to be regulated, and the waste of the manor to be improved; what is your objection to that?—What I said before, that private individuals can improve property much better than a public body.

834. But private individuals would, under the scheme I suggested, have the common field land, therefore they could improve that?—Yes; but I do not understand who is to improve the waste of the manor; that will have to be done by a public body.

835. Then your opinion would be that under all circumstances, land which is held in common would be better held in severalty?—Yes, I do think so.

836. Then your remarks apply to everything?—Giving the recreation grounds and the allotment gardens. I do not think there is a person in Barrowden who would ask for the waste of the manor to be kept distinct.

837. There is nothing special in this case that you lay down; that, for instance, land owned in common cannot be improved, and therefore that under any circumstances you would inclose this 290 acres of land, and take the recreation ground of four acres?—Yes.

838. And it was holding that general opinion that you expressed yourself so strongly, as Mr. Wood tells us you did, against regulation?—I do so. I must say this, that I have had a great deal of experience in a parish in inclosing the waste of the manor; and it was a very bad waste before, and it now has increased its standing with the policeman very much; that is the adjoining parish to where I live.

839. I only want to get your opinions, you being a practical man; then you think that inclosure is desirable, and regulation is impracticable?—Yes, I do.

Sir *Walter Barttelot.*

840. You say that regulation is impracticable, but you do not mean when you say that regulation is impracticable, that if this common that we are now talking about was near a large town of 30,000 or 40,000, or 50,000 inhabitants, and they were willing to pay their fair share of the regulation of such common, then it would be an impracticable thing?—No, certainly not.

Sir *Walter Barttelot*—continued.

841. Because your answer, as it has gone down now, and as my honourable friend, the Member for Hackney, wished to make you say it, is that it is utterly impossible to regulate any common?—No, I am alluding to Barrowden or South Luffenham.

842. What you meant to say was this: that in an instance of this kind where the common is very poor, where the expense would have to be paid absolutely by the owners of the property to regulate it, it was not worth their while to do so?—Yes.

843. Now what is the value per acre of the waste of the manor at Barrowden and the Luffenhams?—I do not know whether I can say little enough; 2 *s.* 6 *d.* or 5 *s.* an acre.

844. You are an agent; you know the value of land well; now then what is the value of that common per acre, if you had to put a value on it now, to let it to a tenant?—In its present state, and to keep it so without being improved, do you mean?

845. I am asking you if you had to let that common as it stands at this present moment, what is the rent you would put upon it per acre?—Two shillings and six pence.

846. What is the value of the commonable land which you propose to inclose in Barrowden and North and South Luffenham?—From 30 *s.* to 40 *s.* per acre.

847. As it stands at this present moment?—Yes.

848. What would that be worth when it was inclosed, that commonable land?—It would be at least 10 *s.* to 1 *l.* an acre better. Some of it would not want much improving, but part of it would increase in value 1 *l.* an acre; but fully 10 *s.* the whole of it.

849. And what would it cost to do that?—£. 10 an acre.

850. On the commonable land?—Yes, on the commonable land.

851. What would it cost to improve the common land, the waste of the manor, and to put it into a decent agricultural state?—£. 20 an acre.

852. And taking the one at 40 *s.* an acre, and the other at 2 *s.* 6 *d.* an acre, you are absolutely of opinion that it is far more in the interests of the parish that the inclosure as now proposed, should take place, than that an inclosure should take place in which an allotment would be made upon the waste of the manor?—Yes, I am.

853. You know perfectly well that supposing this is carried out, so far as you are a judge, a fair allowance would be made to every cottager in the place for allotment gardens?—Yes, I think so.

854. What do you consider is a fair amount of garden ground for any cottager to have?—We never exceed a quarter of an acre, very rarely.

855. And there are 68 cottages now, I think?—Yes.

856. And 20 acres is proposed to be allotted?—Yes.

857. All good ground?—First-rate ground, worth 3 *l.* an acre.

858. And if there was an allotment upon the common, and it was put into good order, what would it, in your opinion, after the 20 *l.* had been laid out per acre, then be worth?—Perhaps 25 *s.* You see it is worth so much less to a cottager to have

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Sir *Walter Barttelot*—continued.

have his land a mile or a mile and a half from home, than what it is to have it close against his own house.

859. I was just coming to that; I was going to ask you whether it is not much more convenient for them to have their garden ground close to their pigstyes (to put it in a homely term) rather than a mile or a mile and a half away from them?—Yes; it is not only more convenient for them, but they can afford to pay double the rent.

860. And they are more likely to get something to dress their ground with?—Yes, and when they come home at evening they can go every night to attend to it; but if it is away from them they only can go one afternoon in the week.

861. Now, as to the cow pasture, is not that commonable land?—Yes.

862. It is not waste of the manor?—No, it is not.

863. I think my honourable friend, Sir William Harcourt, rather made a mistake with regard to the grass land, because he took down that you said that there were 300 acres of grass land. Now, as I understood you, you said there were but 100 acres of grass land that was cow pasture or commonable land, and that the other land which he called grass land was the common which was waste of the manor; is not that so?—The 100 acres of meadow land I was speaking of particularly, because that refers to several more answers. The 100 acres of meadow land is very good.

864. But that is inclosed land now, is it not?—No.

865. How many acres of cow pasture are there?—One hundred and eleven.

866. How many acres of commonable meadow land?—One hundred and nine, about.

867. Are either or both of those inclosed in any way?—The cow pastures are inclosed for a certain time, from the 13th of May to the 12th of August. Lord Exeter has the right of it between those two dates, and to tell you what state it is in we let it for 19*l.*, and we pay 22*l.* 8*s.* and 2*d.* tithes; so it is a very unprofitable business.

868. Therefore it is a loss of 3*l.* 8*s.* 2*d.*?—Yes, every year; and some years we have lost the whole of the rent, because we are not able to let it.

869. Now, just for the sake of argument, so far as you know, without going too closely into it, supposing that that land was inclosed in severalty, how much would Lord Exeter get, and what proportion would belong to the other people who have rights upon it?—I could not answer that question; that is a very large question; it is a matter of value.

870. How many other people have any rights over that grass land?—Twenty-nine, I believe.

871. And what are they, principally?—They are small farmers. Two or three are large landowners, but only two or three I believe.

872. Then of course it would be very much split up?—Yes, it would.

873. You have not gone into a calculation of what the cottager might get if it were inclosed?—No, I tried one day, but I was beaten.

874. You said in answer to my honourable friend Mr. Fawcett, that there were not so many cattle kept now as formerly?—Certainly there are not.

875. Is that on account of the cottagers not being able to keep their cattle during the winter?—Yes, partly, and the land is so worthless before they can stock this meadow land. Formerly they used to be able to keep their cows in the summer on the waste of the manor, and then when the 12th of August came they could turn them down on the meadows; but now they do not have the cattle they used to have; in fact there is not a fourth of the stock in the parish there used to be. One tenant told me that he declined to stock the common any more on account of the cattle plague, and all sorts of infections which he had received from stocking it; in fact it has nearly made him a bankrupt.

876. There can be no doubt that without the strictest regulation possible it is very difficult on commons and commonable land to prevent disease spreading?—Certainly; you can hardly prevent it; you may bring a beast one day and it seems perfectly right from the market, and the next day it may break out with the foot-and-mouth disease.

877. And it is especially dangerous where they are being brought in the morning and taken away at night, to have the cattle there?—Yes, they are always moving, they are never quiet.

878. This is a largish tract of country altogether, this land that is uninclosed, is it not?—Yes, and a very disgraceful one.

879. But the question I was going to ask you was this: for the comfort of an agricultural population, is it not most essential that there should be a good supply of winter labour?—It is; men will not stop in the district unless they have regular work from one year's end to the other.

880. And where you have an uninclosed district of that kind, is it not a matter of sheer necessity that the farmers cannot employ their men in the same way that they would if that commonable land was inclosed?—They have not the same work for them, and they are never inclined to do any improvements at all.

881. Then I distinctly understood you to say that you went round with the Assistant Commissioner to most of these cottagers who are interested in the matter?—Yes.

882. Not particularly to ask them questions?—No.

883. But that from the circumstances of the case, and as a matter of fact, they knew perfectly well what you were there for?—I have no doubt they did.

884. And if they had anything to say, you have very little doubt they would have said it?—Yes.

885. Then as a matter of fact, not looking at any other inclosures, but at this inclosure in which you are particularly interested, you believe that in the interest of all parties it would be good that that inclosure should be made?—I do.

Sir *Charles Dilke.*

886. You said that Mr. Wood suggested four acres for the recreation ground, and you also said that it was not until after the meeting that he visited your proposed ground?—Yes, that is so, the first meeting.

887. Do you mean the public meeting?—The first public meeting; there is one in the morning and one in the evening.

888. You mean between the two?—Between the two we visited the ground.

889. He

Sir *Charles Dilke*—continued.

889. He had made the suggestion as to the amount at the first meeting?—Yes; and wrote it down what was suggested.

890. But had there been no previous conversation between you and him?—Not in the least; I never saw Mr. Wood till that morning.

891. Did you propose to give recreation ground in that particular spot, whatever the amount he suggested?—Yes. He asked us where we proposed to give it; I have had some experience in inclosures, and I said at once that there was only one place really desirable for the parishioners.

892. But you would have given it there, whatever the amount that he wanted?—Yes; that was the only proper place, the only level ground where they could play at cricket or other games.

893. But formerly they never gave more than four acres?—Formerly, in the inclosures I had to do with, they did not give any.

894. But in this particular case we are now acting under a new Act, which you say you have not read; but you are probably aware that under that Act they have power to give any amount for that purpose?—Yes.

895. You thought Mr. Wood would not give more than four acres?—I told him I thought it was more than was required, considering that Stamford had eight acres for 8,000 inhabitants, and they considered it far too large.

896. Is there much cricket played in that part of the world?—Yes, at Stamford.

897. But in these villages, I mean?—No.

898. Do not you think it would be a good thing for the villages if there were?—Yes.

899. Do you think four acres would be enough for that?—In rural districts they do not play many matches; they get plenty of recreation without playing cricket, I think.

Mr. *Pell.*

900. Did Mr. Wood go over the parish himself, right over the open fields?—We drove round the open fields. Mr. Wood has been twice to Barrowden.

901. Did he do all his personal inspection of the land to be inclosed in one day, or did he take more than one day to do his personal inspection?—At Barrowden he took one day; he spent the whole of one day at Barrowden, a very long day, but he had been there previously one day; that makes two days. He was not a stranger in Barrowden.

902. Have you seen that paper of instructions (*handing a paper to the Witness*)?—No.

903. I think you have told me that Mr. Wood had only devoted one day to going over the parish, the commonable land?—Yes.

904. Were you with him?—Yes, I was.

905. Did any other persons accompany you?—Yes; I think half a score of us went all about the village.

906. Did the inhabitants, in contradistinction to owners, accompany you, any of them?—No, I do not know that they did; I do not think so.

907. Had any notice been given of Mr. Wood's coming?—Yes.

908. The people knew of it perfectly well?—Yes, I was talking to some of our cottagers about it, and I showed them where we proposed to give the recreation ground and allotments.

909. At that time?—Yes.

910. Was any objection made to that?—No; they seemed very pleased to have their allotments near the village.

911. And the recreation ground?—They do not care about the recreation ground.

912. You know something of parish life in the country?—Yes.

913. Do you find that the people in the Midland Counties make much use of recreation grounds?—Certainly not.

914. You do find them make use of their cottage garden when it is near their houses?—Yes, I do; but when it gets a distance off, it does not seem to be half the use to them.

915. You said just now that in effect this inclosure would allot 60 acres to the poorer inhabitants instead of 20?—Yes.

916. Meaning by that that the 20 acres that they were going to have, that it was proposed to give them, was worth 60 acres of the waste of the manor, as regards distance?—And value too; more in distance; but it was the value I was speaking of.

917. But am I correct in saying that the waste was of no value whatever to the small occupiers, or next to none?—Not the least.

918. Am I right in saying that it was so far off that they could not get any advantage from it, or very little advantage from it?—Quite so.

919. Do you know what a sheep-walk is?—Yes.

920. Have you any sheep-walks in Barrowden?—No.

921. Who graze this waste?—The parishioners turn some stock on, but nothing to what they used to do.

922. Who had the principal enjoyment of the waste; who got most of the waste; put it in very plain language?—One large farmer, who does not live in the parish, and who had no right to put so much stock on as he did.

923. He got the principal advantage from the waste?—Yes.

924. And he has it now, if things remain as they are?—Yes, and the cottagers are always saying that his stock ate them up.

925. Did the cottagers and the smaller proprietors take notice of this use of the waste, and complain of it?—They did to him.

926. And they said that the large man under the present system ate them up?—Yes.

927. Do you say that that large man brought stock on to that common beyond the quantity which he ought to have put on as an occupier of Barrowden land?—No doubt of it.

928. Do you say, therefore, that the inclosure of this land would restore to the smaller people and the smaller owners rights in full which belong to them now, but which they cannot enjoy from the circumstances of the case?—I think the smaller men will receive the greatest benefit.

929. And the smaller men include among them, I suppose, some cottagers?—Yes.

930. Are any of your labourers little freeholders?—No, I think not.

Lord *Henry Scott.*

931. Do you think that the same results that you have just stated will be derived from inclosure, could not have been equally derived from regulation of these open wastes and pastures?—I think a greater result will be derived from inclosure than from regulation.

932. You say that you had not read the Act?—No;

Mr. *Martin.*

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Lord *Henry Scott*—continued.

—No; but I perfectly understand the advantage of regulation.

933. Do you think you are likely to understand what the effect of regulation is, if you have not read it?—I think the questions which I have been asked, have led me to understand it.

934. I wish to call your attention particularly to Section 5 of the Act, and you will see what can be done under regulation; you will see that "the draining, manuring, or levelling the common; and the planting trees on parts of such common, or in any other way improving or adding to the beauty of the common; and the making, or causing to be made, bye-laws and regulations for the prevention of, or protection from, nuisances, or for keeping order on the common; and the general management of such common; and the appointment from time to time of conservators of the common, for the purposes aforesaid;" all that can be done under regulation?—Yes; and I have no doubt they would keep on the same unfriendly feelings, as they have now, with that.

935. But if there were proper conservators appointed that could be overcome, could it not?—It would cause a great deal of trouble, and very little good feeling amongst them; that is my opinion of it.

936. Have you ever had that view at all put by other persons, or have you heard it put to them?—Yes, I heard it discussed.

937. Did Mr. Wood put forward at the meeting regulation, and the advantages that might be derived from it?—Yes, he did; but we said that we wanted the whole Act.

938. In fact, you wanted inclosure?—We wanted inclosure in full.

939. In fact, you wanted inclosure and nothing else?—And nothing else.

940. When you spoke of the value of the pasture, I think you said that the Lammas land is fair pasture, did you not?—Good pasture.

941. In the event of inclosure will that be broken up?—No, it is liable to be flooded; in fact, it is too good to break up; much more valuable as grass.

942. Should you propose, then, if the waste was inclosed to break it up?—Before it can be made of any value it must be broken up.

943. And what should you do with it?—I would not say exactly what I should do with it, but certainly it would have to be cultivated and improved before it could be laid down to do any good in pasture.

944. Are the common lands and the open fields the same quality of land?—No, not quite.

945. Do they lie far apart from one another?—There is a road between.

946. Are the open fields on one side of the road and the other on the other side?—Yes, the waste of the manor is rather flat land, and drains badly; so do the commonable lands; but still it will drain very well if properly attended to.

947. Do you think there is as much difference as between 2 *s.* 6 *d.* an acre and 40 *s.* an acre between the two?—I do in its present state.

Lord *Henry Scott*—continued.

948. Do not these poorer people turn out any cattle or sheep on the waste of the manor?—They do not now; an odd beast, or a few sheep, but nothing to what they ought to do.

949. I suppose if it was more stocked it would be better land, would it not?—No, there is nothing for them to eat.

950. I think you said that it was very much covered with thorns?—Gorse and thorns.

951. Did you hear anything said about the general character of the people of the village when Mr. Wood was there?—I did.

952. Did you give him any information on the subject?—I say that they are not of so good a standing as the adjoining parishes.

953. What do you base that opinion on?—From seeing them in the cottages, and going about amongst them.

954. Do you mean that they are poorer?—Yes, they are poorer.

955. Do you think that they are poorer than persons who live entirely upon their agricultural labours; I mean to say, are they less well off than those who are merely agricultural labourers?—These are agricultural labourers.

956. But I am talking of those who have rights, those with whom you compare them?—If you mean in the adjoining parishes, I have no doubt they are nothing like so well off in this parish; they cannot be; good men will not stop in the parish, and therefore a lot of a moderate class of men come who live in bad cottages, and work occasionally.

957. What is the reason of that, do you think?—I say that good men will not stop with such a want of a labour market.

958. But you do not find fault with their moral character, do you?—No; I do not know much about their moral character; I have not had much complaint of that.

959. You merely meant to say that they were not so well off as some of the neighbouring parishes?—Yes; not so good a class of men.

Chairman.

960. I suppose you would consider that it would be somewhat out of place to appoint conservators of such a common as you have just described?—I cannot see that it would answer at all.

961. Would you not think that the machinery of conservators and of regulation, such as my noble friend has described to you, would be more applicable to a common which would be an agreeable place of recreation for a large population?—Yes, a good deal more so.

962. In this place the wants of the people are really to have cultivatable land?—Yes; in fact, they have had conservators here, to a certain extent; men appointed to see that the commoners should only stock it in certain quantities, and they have failed in it. I should like before I go to mention that at the present moment I have had two farms given up, and one I cannot let at any price; and I have now three more given up, and the farmers say they will not stop in the parish unless they can have an inclosure.

Tuesday, 19*th June* 1877.

MEMBERS PRESENT:

Sir Walter Barttelot.
Mr. H. Cowper.
Mr. C. B. Denison.
Sir Charles Dilke.
Mr. Fawcett.
Mr. Leveson Gower.
Sir William Vernon Harcourt.
Mr. Pell.
Mr. Sclater-Booth.
Lord Henry Scott.
Mr. Arthur Walsh.

THE RIGHT HONOURABLE GEORGE SCLATER-BOOTH, IN THE CHAIR.

Mr. RICHARD THOMPSON, called in; and Examined.

Chairman.

963. I BELIEVE you are the legal adviser of Lord Exeter, are you not?—I am, in little country matters; not his general solicitor, but in country matters I am frequently.

964. Did you act as his legal adviser, and as the legal adviser of the owners interested in this inclosure in promoting the inclosure, and in conducting the necessary preliminaries?—I did.

965. You procured the necessary consent of the parties?—I did.

966. Did you think it necessary to restrict yourself to the statutory number of the consents required, or did you go all over the parish and endeavour to make yourself acquainted with the feelings of the community generally?—I, myself, went over a great part of the parish, and my clerk went over the remainder of the parish at the same time.

967. Are you speaking particularly of Barrowden?—Only of Barrowden.

968. Are you intimately acquainted with the circumstances and conditions of Barrowden?—Intimately.

969. And also of the two Luffenhams?—No, not so well as to the Luffenhams. I have known Barrowden intimately for more than 50 years.

970. How far is Barrowden from Luffenham?—The two parishes adjoin, and the villages, I should think, are a mile and a quarter to a mile and a half apart.

971. Then, although you know Barrowden, in the way of business, more intimately, you are probably acquainted generally with the circumstances and conditions of the two Luffenhams?—I have been over the fields a great many times; I have been practising as a solicitor at Stamford for more than 50 years, and have been over the fields very frequently.

972. But do you know the circumstances and conditions of the villages and the population?—I do; not only professionally, but I have been a great sportsman in the neighbourhood, and I have fished and shot over Barrowden especially, for a great many years.

973. Have you formed any opinion as to the expediency of these inclosures, apart from your duties as agent to Lord Exeter?—Decidedly.

Chairman—continued.

974. Can you speak with confidence as to the general feeling of the district being in favour of these inclosures, and as to the absence of any feeling in opposition to them?—I am sure that the feeling is universal that there should be an inclosure, and that it would be a great improvement, more especially to the poorer inhabitants of the place.

975. Has that long been your opinion?—That has long been my opinion. I was engaged in an attempt to inclose Barrowden in the year 1871, and the two Luffenhams also; there was an application then made.

976. From 1871 to the present time, then, the subject has been in your mind?—Always.

977. Have you met with any indications of feeling, or of opinion, which would induce you to consider that there might be some doubt as to the expediency of these inclosures, having regard to the future circumstances of the neighbourhood?—I have never heard the smallest doubt expressed by anybody, but that the inclosure would be a great improvement to the village itself, and to the neighbourhood.

978. And that not only for the present parties interested, but for all time; is that so?—I have certainly heard that view expressed, very strongly, for the last 10 or 15 years.

979. Where do you reside?—At Stamford.

980. Can you say to the Committee, in a confident way, that if there had been any *bonâ fide* desire to oppose these inclosures, or if there was any serious mischief to be apprehended from them, it must have come under your notice?—I am certain it must.

981. Are there plenty of people in Stamford, for instance, who might have taken it up if there had been a public or political grievance?—Yes, certainly; there are two or three little facts, if I might be permitted to mention them, in my own knowledge, which I think the Committee should know.

982. Will you do so, if you please?—The first of these is this (and I speak very strongly on the point), that the state of the parish has gone down within the last four or five years very materially; and it has gone down partly for this reason, Lord Exeter's agent, about four years ago, attempted

Mr. *Thompson.* 19 June 1877.

Mr. *Thompson.*

19 June 1877.

Chairman—continued.

attempted to throw together such portions of his land as adjoined each other, and upon that occasion, to a certain extent, he increased the rent, and the result of it has been, that at this moment there has been one farm entirely and utterly uncultivated for these two years, and it is now utterly unlet. I heard the agent, when we were going on with this enquiry, offer to let this farm to a respectable tenant for next year, from Lady-day this year to Lady-day next year, if he would pay the tithe, and he refused to do so. At this moment there is one farm unoccupied, and there are three of these farms. to my knowledge, as to which Lord Exeter has received notice that the tenants mean to quit at Michaelmas; and there has not been any application made to him to relet these farms. Mention was made before the Committee the other day as to the three parties who had objected to sign the application. Two of those parties were clients and personal friends of my own; one did sign the application shortly afterwards, but it was after the return had been sent in to the Inclosure Commission; the other declined to sign in the first instance; he was very dangerously ill, and could hardly be spoken to, and he declined to sign, under the impression that they were going to inclose the open field land and not the commons; and he said it would be no advantage whatever unless the commons and waste were also inclosed; and he has several times since that period mentioned to me strongly his wish that the whole of it should be inclosed, both commons and waste. And as to the labourers who were at the meeting; when the meeting was held by the Commissioners, there were several of the labourers present, I myself acting in the matter and promoting as much as possible the inclosure. I personally asked many of them, several of them, seven or eight of them certainly, whether there were any objections to be made; whether they had anything whatever to suggest, saying that we should be uncommonly glad to hear it, and begged that they, or anybody there, would give us any information upon it that they could. As to the regulation of the common, I think you would be very much better judges than I should be; but the effect of it would be this: if the commons were regulated, it would cost, Mr. Martin stated, a large sum of money; the occupiers, who are the only parties interested in it, who are merely tenants from year to year, would never think of laying out that money, because they might be deprived of it either by themselves giving notice, or their having notice given to them.

983. I will ask you one question upon that; is that an objection which would apply against all regulations under the statute, or do you think more particularly against this case?—I can only speak with regard to this particular locality.

984. Can you imagine instances of commons handy to populations, or otherwise favourably circumstanced, which would be quite sufficiently dealt with by means of regulation?—Yes, there might be many cases where regulation would be desirable, I dare say. Then there was, I think, a little misunderstanding with regard to the right of stocking the common; the right of stocking the common is this——

Mr. *Fawcett.*

985. What are you referring to?—Barrowden.

Mr. *Fawcett*—continued.

986. To the waste of the manor in Barrowden, or the whole?—To the whole land, both the waste and the open field lands. I should like to say that the right of stocking the open field lands is in the commoners, in those who have common rights, of whom I have got a list, an old list, from the year 1786; it shows who were entitled to stock the common, and the extent to which they might stock the common. The right is in the occupiers of land and in 20 owners of commonable cottages in Barrowden, who in respect of those houses have a right to stock the land, the common; and I would, if permitted, put in a copy of an ancient terrier, an ancient schedule, showing who those people were. I cannot say precisely the names of the present ones, but whoever was the owner of these common rights at that time, whether it is now his child, or whether he has sold it, or be they who they may, they would be entitled in respect of these common rights.

Sir *William Harcourt.*

987. Are those principally freeholds?—They are all freeholders, I believe.

Mr. *Pell.*

988. Was the question of the regulation of the common at Barrowden considered at all?—Very considerably; it was particularly inquired about; and, in the first instance, when we went round, before anything could be done, I was aware, of course, of the Act of Parliament, and we inquired whether it could be so altered, or so managed amongst themselves in any shape whatever, that it would be available, and it was universally said that it would not, and that the inclosure of the whole would not be worth going on unless there was an inclosure of waste and commons.

989. Who brought the question of regulation under your notice; the Assistant Commissioner, Mr. Wood?—No; it was brought chiefly to the notice of the inhabitants by myself before we ever went before the Commissioner. The Commissioner read the inquiry to the meeting, whether it could be done, and it was universally answered that it was impossible.

990. How do you account for the value of the farms being injuriously affected by the strips of land being put together, as in Lord Exeter's case, which you mentioned just now?—It was not injuriously affected altogether. To a certain extent there would be some improvement.

991. I thought you said the consequence was that the farm could not be let?—But in consequence of the supposed improvement, there was an additional rent fixed upon it, and the rent would break the back of anybody.

992. The rent frightened them, in fact?—Yes.

993. Not the proposal to put the land together?—No; because if that were the case, the effect of the inclosure would be bad.

994. Now, I think you say you have been a great deal in Barrowden, and know the parish very well?—Well.

995. Have you heard the common people, the workpeople, express any dislike to the proposed inclosure?—None; much the reverse.

996. I was going to ask you, are you in the habit of conversing with them when you are fishing and shooting there; you say that you have frequently fished and shot there?—When Mr. Caird, the Commissioner, came down quite unexpectedly,

Mr. *Pell*—continued.

unexpectedly, we fell in with two or three women who were sticking, and they gave us such an account of the present state of the parish, and the want of labour and the desirability of an alteration, that no witnesses that I could possibly call before you, could be more conclusive than they were. We were very much amused by their description of what was going on.

997. The common people that you met with casually in this way expressed themselves as desirous for an inclosure?—Decidedly.

998. The farmers are, I suppose (I think that is admitted), anxious for an inclosure?—All of them that now occupy land.

999. Is it the case that they will not continue to occupy the land if it is not inclosed?—Certainly; I have mentioned that there are four farms now, one of which is totally unoccupied; no part of that farm has been ploughed for two years.

1000. You live at Stamford?—I do.

1001. The municipality of Stamford has some little interest under the Act in the inclosure; their consent has to be asked for, I think it is so, is it not?—One end of what we call Barrowden, or Luffenham Common, is within the six-miles area.

1002. Now, with regard to Stamford, we know that the thing has been formally brought before the authorities there, and that they have not objected to the inclosure, but have you heard among the people at Stamford any desire to keep things as they are?—I think there is not very much interest at Stamford upon the subject. My own family and children and sisters occupy, I think, either five or six of the principal houses in the town, and I can only say this, that I never heard in the course of my life of a single individual going to the spot in question for a picnic party, or a junketting, or anything of the kind; I never heard of a person going there in my life.

1003. You have gone there?—I have gone there fishing and shooting, and I say that at the present moment there are many portions of it where you cannot see a rabbit upon it two yards in front of you.

1004. On account of the thistles, do you mean?—On account of the thistles; they are up to your middle at this moment.

1005. It is a nice place for sport, then?—It is the most wretched, miserable, deserted village that I ever saw in my life.

1006. You would call that place a disgrace to rural civilisation?—I do.

1007. And you do not see any other way of improving it, or getting things into better form than by this reasonable proposal of inclosure?—I know of none; I can suggest none.

Mr. *Fawcett.*

1008. As you know this place so intimately, I will ask you, can you give us any specific facts; I want to get facts from some one, which will show an independent opinion of the low condition of this place; will you compare its pauperism and its crime with any other village of the same size?—No, I cannot say anything about the crime.

1009. Then there is no one from the neighbourhood who is able to base this opinion of its low condition on statistics?—I heard one or two of the labourers express this opinion, walking about; they said this, that the place had gone down miserably; that there was no farmer in the place who would employ any labourer; that it would not pay; and that if it had not been for the erection of some very great engineering works, with regard to two railways, one-half of the labourers in the parish this year would have been out of employment altogether.

Mr. *Fawcett*—continued.

1010. Then you would expect, if that is the case, that such a bad state of things as you describe would be shown in a high rate of pauperism?—It would have been if it had not been for these railways, as many of the men who would otherwise have been seeking employment upon the land are now employed upon the railways.

1011. Still, your description is that the people are impoverished and poor, and the usual accompaniment of impoverishment and poverty is pauperism, is it not; if your description is an accurate description, it would be shown in the pauper returns, would it not?—I cannot go to the extent that they would be upon the union, but I can say this, that a good many of them for years have been, more or less, clients of my own office; and I can say about the farmers, that they are a very little degree above the labourers themselves. You cannot conceive a worse position of things than it is.

1012. I want to get at a correct idea of the facts; what I understand you is, that this bad state of things which you describe now, commenced about four or five years ago, did it not?—It has been always more or less so during my time; but the state of pauperism among both the farmers and the labourers has undoubtedly increased during the last four years.

1013. Then this bad state of things has increased undoubtedly during the last four years; things have been going down hill during the last four years?—That has been so.

1014. And the common has been less stocked and the land has been worse cultivated?—The land has been worse cultivated, and there is little or no stock in the village; there is hardly a farmer in the place who has capital or means to have 50 sheep, nor could he keep them.

1015. Then the proposal to inclose this common was first mentioned about 1871, was it not?—It has been talked of, more or less, during the whole of my lifetime.

1016. But a scheme was promulgated then?—A scheme. There was always during my memory (I speak certainly on this subject for 50 years) a great jealousy between two great landed proprietors, who claimed an interest in Barrowden Heath, Lord Aveland and Lord Exeter, who differed upon many subjects, and they never would consent to unite together to inclose Barrowden Heath.

1017. Then up to 1871 the difference of opinion existing between Lord Aveland and Lord Exeter prevented anything like a scheme being promulgated; but then they settled their differences?—I think both of them died about that time, and the feud between them did not pass to their sons.

1018. From death, or whatever cause, the feud was healed?—Yes.

1019. Then, so far as I understand your evidence, the very moment the feud between Lord Exeter and Lord Aveland was settled, which feud prevented the inclosure of this land, an inclosure

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scheme was promulgated, and the rents were raised, and with the promulgation of that scheme, and with the rise of rents, then that state of things began, or grew worse, which you have described?—It grew worse, no doubt about it; it has been gradually growing worse for many years.

1020. But still this very bad state of things, this maximum of badness which you have described, was contemporaneous with the settlement of this feud, which allowed a scheme to be promulgated, and with a rise of rents?—No, I do not think that the inclosure scheme altogether made any alteration in that respect. The little freeholders in the place could not inclose either lordship, because Lord Exeter or Lord Aveland in either lordship owned so great a proportion of the land, that their own objection would prevent, would veto anything.

1021. I am not now examining you as to what prevented the inclosure, but I want to deduce the conclusion, to bring out more clearly your own evidence; you stated just now, in reply to the Chairman, that about 1871 the rents were raised?—No, about four years ago.

1022. And from that time this land has been thrown out of cultivation, and on that you have laid very great stress; therefore I say, since an inclosure scheme was promulgated, and since this rise in rents, the bad state of things to which you so particularly refer has occurred?—That bad state of things was greatly increased by an increased rent. When it was entirely divided into 2,700 pieces, it was partly thrown together, and the rent was increased; but I am a practical agriculturist myself, and a considerable owner of land, and I do not hesitate to say that at this moment, with the increased rent, it would be worth as near as possible double what it now is if it were inclosed.

1023. You say that seven or eight labourers were present at the Barrowden meeting, and from them you asked particularly whether they had any opinions in opposition to this proposed inclosure?—I do not mean that they were all attendant at the meeting, but they were walking round the door of the public-house, or club by, and at times we walked over the field entirely; I walked over the field with the Commissioner.

1024. I have a particular object in asking you this question; just now you stated distinctly that at this meeting seven or eight labourers were present to whom certain questions were put?—I can hardly say whether seven or eight were present at any one particular moment.

1025. How many were present?—I could not say.

1026. Was one present?—Yes.

1027. What is his name?—I do not know their names.

1028. Is there any record of his being present?—I do not know; I took no record, of course, of any of the proceedings.

1029. But will you look at the record of the proceedings, because your evidence, if I had not examined you, would have distinctly led to the conclusion that at this meeting (and it is the proceedings of this meeting which guide our deliberations to a great extent) there were several labourers present; I take your own number seven or eight?—I will not say that they were all there at any one time, but during the course of the day.

1030. Of course I do not want to get anything from you that is not correct; all that I am reminding you of now is, what you have stated in reply to the Chairman, and what, if I had not examined you, or some one else had not examined you, would have been recorded upon our proceedings. I am in the recollection of the Committee, that when your examination commenced you distinctly conveyed to the Committee this impression, that at this meeting seven or eight labourers were present; that the question was distinctly put to them whether they objected to the inclosure, and that their reply was in the negative; and now on pressing you on the point, you say that, as far as you know, there was not one present, but that there were one or two outside; you cannot give me the name of a single labourer present, or any details to justify that statement?—Yes, there were certainly one or two present in the room; I cannot mention names.

1031. Then look at the record of the proceedings of the Barrowden Meeting; if the labourers were present, when you see the list of the people who were present, I daresay their names will immediately be recognised by you, as you know this place so well?—No, I could not say that I should know their names.

1032. Then I am to understand you that, as far as you can inform this Committee, you do not know the name of a single labourer who was present, and consequently that if no labourer was present, the opinion of these labourers was never, as far as you know, conveyed to the Assistant Commissioner?—My recollection of it was this, that several of them were present in the room, and it was stated by some of them, "Why, he is not a commoner; he is not an owner;" and my impression is, as to the names of the labourers, that it was supposed that they had no interest in it, and I believe that they were not put down at all, but there were inquiries made of them; I would not be very confident about that, but that is my recollection.

1033. You see, if you could give their names, it would give us an opportunity of examining some of these labourers; but then your impression is that, after all, there were labourers present, that questions were put to them, but there is no record of those questions, and that the names of the labourers were not recorded?—I think not.

1034. Did you study the scheme of regulation very carefully in the Bill?—I read the Act of Parliament pretty carefully.

1035. Do you think any one else in Barrowden to whom you explained the regulation scheme had read it in the Act except yourself?—No, I should doubt it.

1036. Then they made up their minds, I understand, in opposition to any scheme of regulation, after hearing your description of it, before they had had an opportunity of hearing the Assistant Commissioner?—They had formed their opinion about it before they ever saw the Commissioner; I am certain of that.

1037. And from the explanation which you had given them?—No.

1038. But then if they had not read the Act of Parliament (and as you say they had not read the Act of Parliament), and if they had not seen the Assistant Commissioner, what other opportunity had they of forming an opinion as to the advisability of regulating this common, except

Mr. *Fawcett*—continued.

cept from hearing your description of it?—I gave them no description whatever, nor any opinion at all about the regulation. I never ventilated the subject with them; they were aware that it might be done, because there were the priuted notices; but they were practical men and practical farmers in the place, and they had formed their opinion that the common could not be so regulated as to be of any benefit to them.

1039. But then they were not aware of the provisions of the Act (I want to bring this out), and they formed this opinion adverse to the regulation without a single one; having read the Act of Parliament, without being acquainted with the conditions which were contained in the Act under which the regulation would take place?—I have no doubt that was the case.

1040. Did the Assistant Commissioner, when he was at the meeting, enter into a careful explanation of the Act, so far as it bore on regulation?—No.

1041. Or did he simply put the question, "Would you like regulation or inclosure"?—He read the printed inquiry to them, and he said, "Can you suggest any mode by which these commons can be regulated, divided, or bye-laws made, or anything that would be a benefit"? and they universally said, "No, we cannot."

1042. I understand that you think, with your great experience on this subject, that regulation is suitable to a common in the neighbourhood of a populous place, to the waste of the manor in the neighbourhood of a populous place, but not to a common in a rural district such as Barrowden?—Such as Barrowden, certainly not. There may be many instances (I have no doubt you are much more intimately acquainted with the advantages than I could be) where regulation of commons in the neighbourhood of populous places, or which parties resorted to considerably, would be desirable, but not here.

1043. Is there any special reason. This is what I want to find out. I am not now referring to the common fields, but simply to the waste of the manor), which would render regulation unsuitable to the waste of the manor in Barrowden, which would not also apply to every common in every rural district in England?—I think there are such reasons. The commons are at some considerable distance from the village; they are in the worst possible state; the whole of this spring I would venture to say that no gentleman could have ridden across; his horse and everything would have been stalled in the wet. When Mr. Caird, the Commissioner, came down, I am quite sure that members of the Committee could not have walked over it without being up to the knees in many places. It would require so large a sum of money to have put these in anything like occupation; as to anyone's walking, or having recreation there, I am sure there was nothing of that kind possible; but they could not have put them into a position to occupy them; they could not have stocked them.

1044. But they are covered to a great extent with gorse, are they not?—They are covered partly with brambles; in some parts it is so wet that gorse will not grow.

1045. But that is in direct conflict with the evidence which is given by the other local witnesses?—They are more than bushes; they are more black thorns.

Mr. *Fawcett*—continued.

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1046. Would you let me finish my question, please?—Mr. Martin, in order to recommend the inclosure, told us last time that he was intimately acquainted with the common, and that the chief reason why he sought to have it inclosed was because it was a furze and gorse common?—It is a mixture of gorse and bramble, and black thorn and white thorn; you could not find a place more desolate and wet.

1047. The common used to be much more largely stocked than it is now, did it not?—Yes; I may say that it was so.

1048. Did you attend the meeting at North Luffenham?—I did.

1049. And the South Luffenham meeting was held in the same place?—It was so.

1050. Although the parishes are conterminous there is a considerable distance between the villages of North Luffenham and South Luffenham, is there not?—I should say half a mile.

1051. A mile, is it not?—From half a mile to a mile.

1052. You said that the feeling in favour of this inclosure was universal in the village?—Certainly.

1053. Now that is, of course, simply an impression of yours?—It is an impression obtained by great local knowledge of almost all the people in the place.

1054. I have obtained very different information; I believe a petition will be presented against the Bill from one of these villages?—I only hope, if such be the case, that the Committee will send an independent surveyor or porson to look over the property themselves, and form their own judgment.

1055. I should be extremely glad if that were done; but of course when you say that the feeling is universal in favour of inclosure, that is simply a general impression; you cannot give me the name, for instance, of a single agricultural labourer with whom you have conversed, and from whom you have obtained such an opinion?—No, I do not personally know their names.

1056. Could you recognise any of them; could you not identify any of them if you saw their names?—No, I could not identify them.

1057. Although you are so very intimately acquanted with the place?—No, I could not identify them.

1058. You said that you had fished and shot and sported here very constantly. Is the common at all preserved, the waste of the manor, a little, is it not?—I think it is a little preserved.

1059. Gamekeepers go their occasionally?—There has always been a dispute upon the common in this case. If anybody ever went there and shot, and an information was laid against him, one or other of the great landed proprietors took care that there was no conviction. They each of them claimed rights as lords of the manor, and one would not permit of the other obtaining a conviction against a man for shooting.

1060. This seems a somewhat curious arrangement; a man breaks the law, and one of these large landowners, apparently, in this locality, has the power of preventing his being convicted by using a particular kind of influence?—I am not a law maker; I only speak of facts.

1061. But I am simply examining you on facts, and what I understand you to say is this: that

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owing to this feud, I suppose, which existed between Lord Exeter and Lord Aveland, the influence of one was used to prevent a conviction sought for by the other?—There is no doubt of that.

1062. How would these sporting rights be affected if this inclosure took place; I suppose some arrangement has been come to satisfactory to Lord Aveland or Lord Exeter?—No; each owner of land would then have a right to the shooting of his own estate. I know nothing else.

1063. Has any attempt been made to this effect (because I think I can produce evidence on this point), that when people have wandered on this common the case has not unfrequently happened that a gamekeeper has dogged their steps as if they were trespassing in the pursuit of game?—I daresay that might be so.

Chairman.

1064. Do you know that that is so; have you ever seen them do it?—I do not know anything about it.

Mr. *Fawcett.*

1065. Is the fishing there common?—I never heard of anybody being interrupted in any way.

1066. Would the fishing right part of the sporting be affected by this inclosure?—No, I think not, because the river bounds the lordship only on one side, and the other side belongs to other proprietors.

1067. But what takes place I suppose is this, that now the fishing is in fact a common fishing, anyone can go there?—Anybody can go there; I never heard of anybody being interrupted.

1068. But when this inclosure takes place, the fishing will belong, on one side entirely to the lord of the manor, and, on the other side to proprietors whose land will be allotted to them in severalty, and whose land will abut the river?—No doubt the fishing will belong to the men whose land adjoins the river.

1069. So that the fishing, like the land, will, as it were, be allotted in severalty?—Yes.

Sir *William Harcourt.*

1070. I observe that in this terrier which you have put in, there are two sets of people who are interested in these rights of pasture; one class are the occupiers and owners, and the other class are the people who occupy ancient cottages without field land?—Not the occupiers and owners; it would only be the occupiers.

1071. In right of the owners?—Yes.

1072. But what I specially want to call your attention to are these people who occupy ancient cottages without field land. Now, may I ask you about these consents which you have obtained; how many of those consents represent the occupiers of ancient cottages without field land?—I incline to think about 14.

1073. About 14 is the whole number?—One or two of them may now be vested in other parties.

1074. Where are the consents; just look at them, and just show me in those consents (because you are the person here to answer for the consents), which are those of the ancient cottages?—I cannot do that.

1075. Then who can; you are come here to vouch the consents to this inclosure, and you are

Sir *William Harcourt*—continued.

the only person who can vouch for them; where is the paper of consents; you are the witness of the consents?—I have not got it, it is with the Inclosure Commissioners.

1076. But the Commissioners refer us to you?—That list which I have given you, that terrier, was made out in the year 1833, 44 years ago now.

1077. I see at the conclusion of the Report of the Commissioners upon Barrowden, there are certain consents given, which you will find printed there if you look at the Paper before you, which is the Report of the Commissioners; those are the consents, I presume, which you or your clerk obtained for the purposes of this inclosure?—Yes.

1078. Now, looking at those, will you tell me which of those are owners of ancient cottages without field land, or if any of them are?—I know that Mr. Phillips is, Mr. Robbs is, Mr. Cliff is.

1079. Are the persons that you are naming persons who own no land at all?—No, I cannot say that; I think they own both open field land and cottages also. I think they have a little estate in the town and lordship; they have common rights, certainly.

1080. Yes; but will you kindly attend to my question; are there there any persons who have the rights of common only in respect of any land that they possess?—The only one that I could fix upon, I think, that I know that has a commonable cottage, as we call it, without having land, would be Mr. Phillips; I think the others have both land and commonable cottages.

1081. What is Mr. Phillips?—A brewer at Stamford, and a lawyer.

1082. That is hardly perhaps a class of man that I am desiring to ask you about; what I am asking you about is this; it appears, you know, from this ancient terrier that there were certainly in the year 1833, 20 people who occupied ancient cottages without field lands. Are there any such persons now in Barrowden?—No, I do not think that the terrier goes to that extent. They had ancient cottages, but in all probability, in addition to that, those parties had field land also.

1083. It does not so appear here in the terrier itself?—No, it would not appear; they would have rights in regard of their occupation, and they would have additional rights as being the owners of free cottages.

1084. I beg your pardon, that is not so, because here are lots of the owners and occupiers on one side, and here are lists on the other side, of ancient cottages without field land; now anyone who held both would appear in both lists, whereas in this list there are a number of persons who are not entered as either owners or occupiers of land within the parish. Now I ask you, can you from your knowledge of this parish pledge yourself that there are no persons who have ancient cottages without field land which are commonable?—I think that there would be a few having cottages and no land; I think there are.

1085. Let us confine our attention to those persons, if you please; those are the persons I want to ask you about now. Can you show me in the list of consents any such person, except Mr. Phillip's, the brewer, of Stamford, whom you have spoken of, who has assented to this inclosure?—No, I cannot distinguish them.

1086. Were

Sir *William Harcourt*—continued.

1086. Were all the persons interested requested to consent?—No, not at all. It was done in this mode; I myself and my clerk went over, and we were certainly under this impression, that when we had got considerably more than the requisite number, those who were absent, or whom we had a difficulty to find, we need not seek after; we knew that the feeling was so strong that, having got much more than the requisite number of consents, we did not apply to outlying people, or people who were ill, or trustees under wills, or matters of that kind; we did not seek them up.

1087. Now let me ask, does this 30, who are mentioned in the Report as persons interested, include the owners of the commonable cottages as well as the owners of the field lands?—Yes.

1088. And then apparently, as far as I learn from you, you did not, for the reasons you have stated, seek out the owners of the ancient cottages?—We did not make particularly minute inquiries in what respect they were interested. We looked at the rate-book and found that we had the great majority of them all.

1089. And you took the more considerable persons, did you?—No, we took them house-row fashion, as we could; we took them from door to door; if we could find them at home, and they signed, we got their signature; and with the exception of the two parties, who were not either of them resident at Barrowden, we never had an objection made by anybody.

1090. Now, you have spoken of this land that was so difficult to let; we heard, from Mr. Caird I think, that the actual rental of the land was about 27*s.* per acre?—At the present time do you mean?

1091. Yes?—I cannot think that it is so much as that.

1092. But do you know what is the average rental?—No, I do not know the rental; I have not gone into the rental of each individual farm.

1093. I do not ask you that; but what is the average rental of land in this parish. We were told by Mr. Caird that, by the rate-book, it was about 23*s.* rateable value, which would represent about 26*s.* or 27*s.* of rack rental?—I dare say that it may be so.

1094. How comes it then that if the land lets at 26*s.* or 27*s.* rack rental, this farm which you speak of is unletable at any price?—Because it is greatly over-rented at the present moment.

1095. But till this farm which you speak of, where the balks were thrown into one, was unlet, has there been any other portion of it unlet?—There is one large farm unlet. I think I mentioned that I heard the agent offer to let it to a man for the payment of the tithe alone, and he would not take it.

1096. But the rest of the land in the parish is let at about 27*s.* an acre?—And three of them have given notice to quit, and the farms cannot be let at all.

1097. And that has occurred within the last four years, has it not?—Within the last 12 months.

1098. Why did it not occur before?—Because the increased rent has only taken place within the last four years. If it had been let for 15*s.* or 16*s.* an acre, probably they would have tried.

1099. Has the rent been raised all over the parish then, nearly doubled within the last few years?—It has largely increased within the last four years. I can only speak of Lord Exeter's lettings; what other parties have let for I did not inquire.

1100. And rents have been raised in this parish considerably within the last four years?—Yes. Now I might mention, though I am not interested in it with regard to North Luffenham, that I had an opulent client, a friend, last year who took a farm in the open field of North Luffenham, and lately, just preceding Lady-day, he determined that he would not hold it any longer, and came to me to give his landlord notice to quit, because, he said, the state of the occupation was such that no man could occupy land in that state to get even an ordinary living from it; and I tried strongly to induce him to remain, under the hope that there would be an inclosure and that he would be better off, but he refused.

1101. Then it was not you who, in the last few years, recommended Lord Exeter to raise the rent on land of that description?—Certainly not.

1102. It was Mr. Martin, was it?—No; it was Mr. Sanderson, not Mr. Martin.

1103. Mr. Sanderson recommended Lord Exeter to raise the rents on this deplorable land?—And I am quite certain that he did to the tenants' great injustice.

1104. Now, one word about game; you are a sportsman yourself?—Yes, I am.

1105. And I suppose it is a pretty good sporting place, or you would not have gone there?—At the present moment nothing could improve the shooting in it altogether; it is so thick that between each two of these sub-divisions of land it is like riding in a wood, and if your spaniels or dogs will face the thistles in the place, you have very good shooting indeed.

1106. A little disturbed sometimes, is it not?—Not that I am aware of.

1107. Now you were asked by Mr. Fawcett about the gamekeeper; is there a gamekeeper generally upon the Barrowden Common, the waste of the manor?—I think not; my own opinion is that there has been no gamekeeper for the last year or two. Lord Exeter's principal tenant in the place, the man who objected to the inclosure unless the commons were inclosed also, I think employed a man to look after it; but he was no gamekeeper; he was only an ordinary overlooker of land.

1108. But do you know that persons are warned off the common?—No, I do not say that.

1109. You could not undertake to say how that was?—No, I cannot say.

1110. I am asking since the time when this terrible feud has been appeased; that seems to have been a happy day for the poachers when that existed, was it not?—I have been there of a night; there was an alarm of a great fire, and there was no doubt that a large portion of gorse upon one of the commons was set fire to intentionally, for the purpose of enabling a quantity of poachers to get the rabbits that they had scorched and burnt out. I walked over one evening, in the dark, five miles to it.

1111. I was not asking about that; you stated that people could do what they liked there, because one landowner would not allow the other to prosecute; how was that managed?—If an

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information was laid against a man for shooting upon the common it was very well known, very well understood, that some friend or other upon the bench, of one side or the other, would object to a conviction. It was notorious. That a solicitor was sent by one side or the other to object to the jurisdiction of the magistrates.

1112. That is exactly what I wanted to know; I want to know how the thing was worked; and you say that if an information was laid against a poacher upon the estate of one nobleman, the other nobleman got a friend upon the bench to let him off?—No, it was not upon the estate, but upon the common. If it was at all understood that one side of the question, one party had laid an information, there was no doubt whatever that a friend upon the bench, on the other side, would prevent a conviction. I have known it for years. That an objection was raised by the other side which would prevent a conviction.

Sir *William Harcourt*—continued.

1113. Then you ought to inclose the bench, I should think?—To confine them, perhaps.

Chairman.

1114. According to your opinion it would appear that the shooting will not be improved by these inclosures?—No, certainly.

1115. Rather the reverse?—I do not think it would. If I went there shooting it would be very much better shooting now, undoubtedly, than it ever was before. Perhaps, in justice to the noblemen whose names have been mentioned, I may say this, that the ground universally taken for preventing a conviction was this, that it was said that it was a disputed right, and one side said "It is in the lordship of Barrowden," and the other said "It is in the lordship of South Luffenham," and that was the great ground upon which the convictions were prevented.

Mr. JOHN COLEMAN, called in; and Examined.

Chairman.

Mr. *Coleman.*

1116. Do you live in Riccall?—I do.

1117. You are agent to Lord Wenlock, I think?—I am.

1118. Have you large experience in agricultural matters?—Yes, I have; I was Professor of Agriculture at the Agricultural College at Cirencester for some years.

1119. You have been employed under Government, I believe?—I was sent out to America last year.

1120. Now the Committee were struck, I think, by the large amount of waste in the case of this proposed inclosure of Riccall; will you describe the nature of the waste?—The waste comprises 606 acres, composed of 492 acres of common, and 114 acres of pasture land known as the Dam. The common is principally covered with gorse and heather. The Dam is a valuable pasture, but subject at times, and especially in winter, to flooding from the backing of the inland waters which cannot get into the River Ouse. The sole rights of stray and pasturage over the waste land belong to the owners of common rights or the tenants of common rights, and no other person has rights of any description.

1121. Now, of course, your attention was called to the provisions of the new Act; did you consider the expediency of proposing some regulations for these commons rather than of inclosing them, as pointed out in the Act?—Yes, of course, I read the Act carefully over, and the Commissioner also called attention to the question of regulation, and to the feeling of the promoters of the Act being to place that first; that where regulation was possible the promoters of the Act considered it desirable.

1122. What have you to say on those points?—The reasons why an inclosure of the common is considered desirable rather than regulation, are principally on account of the nature of the soil; it is very light sandy land, which is not suitable for grass; and do what one could in the way of draining (for certain parts require draining), marling, grubbing up the gorse and heather, and so on, the class of grass would be of a very inferior description; and those gentlemen on the Committee who are practically acquainted with

Chairman—continued.

agriculture, will fully bear me out, I think, in the statement, that land of that class can grow more stock under cultivation, while at the same time it can grow half the area annually in corn. I may refer, as a similar sort of land, to the Norfolk sand, and it is well known there that that is the case. But there is a special value in this class of land in this particular locality for the cultivation of potatoes, which enter very largely into the rotation for the supply chiefly of the large West Riding centres, Bradford, and further on into Lancashire, Manchester, and so on.

1123. That would be what one might technically call one of the advantages to the neighbourhood under the Act?—Yes, certainly. Then I would say that the owners (I am quite sure that I am stating their opinion), would not agree to the regulation of the common and the inclosure of commonable lands for two reasons; first, because the outlay for regulation would not pay, the grass land being of such an inferior character when reclaimed; and, secondly, because the owners look to the ultimate return from the common when it becomes arable land, to repay for the general cost of outlay in inclosing the commonable lands, making roads, and draining, and so on.

1124. Would that be a large outlay of capital?—Yes, I estimate the outlay at 15,000 *l.*; there are some 1,300 acres to inclose.

1125. You think that but for the gain to be anticipated from the inclosure of the common, the owners and parties interested would not be willing to incur that outlay?—I think not; that is my opinion.

1126. We have heard why the Luffenham and Barrowden lands are now imperfectly cultivated; does the same argument apply in the case of Riccall?—Yes, as to the commonable lands, entirely so. If you look at that copy of the Tithe Commutation Map (*pointing to it*), it would show you the extraordinary division.

1127. It is not so much the extraordinary division I am asking you about, as the rights of common which intervene so as to prevent the ordinary processes of agriculture?—That is not so much the case. The land is exceedingly fertile

Chairman—continued.

fertile naturally; we do grow turnips, but we are obliged to remove them from the land, in order to throw the fields open for the stock of the common-owners.

1128. The case not being exactly the same as that of the Luffenhams and Barrowden, will you describe why the Dam, for instance, is not fully productive, and why the commonable lands are not fully productive, so as to support the application for an inclosure?—The Dam is not fully productive mainly on account of its being very much over-stocked; it is a common without stint. At a former period a bye-law exercised certain restrictions over the common-right owners, and there was an understood custom that no common-right owner could turn out more stock in the summer on the Dam than he could winter on his own land. That custom has fallen into disuse, and now selfish common-right owners turn out, to the great injury of others, a very undue proportion of stock. The consequence is that winter and summer the ground is kept bare; there is no opportunity for the grass to grow, and the stock are half starved, and many of the owners are prevented from turning out at all; if they are humane people they will not turn out, because they know it is starvation to their animals.

1129. Would not some means of regulation affect and restrain these rights?—Yes, but it must be regulation, not only as to the quantity of stock, but as to the season of turning out. If you regulate merely as to the quantity of stock per right, and allow them to turn out all the year round, you will still injure the land; grass land wants rest.

1130. You are speaking now of the Dam pasture?—I am, of the 114 acres of land; I would just say that this Dam lies round the outside of the parish, and is not a place where anybody either has any right to go, except they are interested as owners, or to which they are induced to go in any way. It is not a place that is frequented by the inhabitants of the place. With regard to the commonable lands, they are principally arable, not entirely, because some of the lower lands near the river is in grass, what is termed Ings Meadow, in Yorkshire. There are 745 acres altogether, in several fields, five or six fields.

1131. How many proprietors are there?—There are 45 proprietors of commonable lands, and they are divided into 1,127 allotments. The maximum allotment is 6 acres 14 perches, and the minimum allotment is two perches, and the average of the 1,127 allotments is two roods 25 perches. Under such circumstances, good cultivation is impossible; it is impossible to drain the lands; the lands are, generally speaking, very narrow, and of very great length, therefore they can only be ploughed in one direction. The junctions of the different allotments form a bed of weeds, and very often, where the farming is bad, these weeds spread all over the other allotments; and I have no hesitation in giving my opinion, as an agriculturist and a practical farmer, that the produce would be easily increased 50 to 60 per cent. if inclosed and thrown into suitable allotments.

1132. What is the rateable value of the commonable lands now, and what do you anticipate it would be of the inclosed lands?—The commonable lands now are a trifle over 1 *l.* an acre; the 745 acres are rated at 751 *l.* 10 *s.* 4 *d.*; the inclosed land of the same nature is rated at from 30 *s.* to 40 *s.* an acre.

1133. In the same parish?—In the same parish; and the rateable value of the common rights is of course very much smaller than the rateable value of the commonable lands. I think that in round numbers the rateable value of the parish of Riccall, as contributing towards the union, will be increased more than 1,000 *l.* per annum. The whole parish is 2,666 acres.

1134. That increase is assuming an outlay, you say, of 15,000 *l.* for the inclosure?—Yes; that is, when it is inclosed and brought into cultivation.

1135. In advocating the policy of inclosure, do you speak in the name of all the inhabitants of the parish, and not merely of the parties directly interested?—I do.

1136. Have you reason to believe that the question of inclosure was agitated in and understood throughout the whole of the parish?—Most decidedly.

1137. What was the number of the attendants at the evening meeting to which we have had our attention directed in the case of the other inclosures?—The evening meeting was well attended, and there were present several labouring men who certainly not only had no pecuniary interest in promoting inclosure, but some of them had apparently a direct influence the other way, inasmuch as, being tenants, occupiers of messuages holding commonable rights, they would lose the rights, such as they were, of stray and pasture over the common and Dam; and yet, notwithstanding that, there was only one exception at that meeting, and that exception was neutral, which I will explain presently, but everybody else was in favour of the inclosure, and for very good reasons, because the advantages, in their opinion, would exceed any loss they might sustain.

1138. You think that was thoroughly understood amongst them?—Most thoroughly; there was no question about it whatever. In fact, it has been the main topic of discussion in our village for a great many years. I may tell you that questions have been asked in the previous inquiries as to whether these inclosure schemes have been promoted by the principal owners in distinction from the smaller owners and the outsiders, and in this particular case of Riccall, the chief owner, unfortunately for himself, has for a long time resisted that pressure which was put upon him.

1139. You mean Lord Wenlock?—I do, and I mean Lord Wenlock's father. Even in Lord Wenlock's father's time other common-right owners brought the subject forward, and he did not see his way to do it. So that the matter has been well ventilated in our parish, and I am quite certain that the notices have been thoroughly understood.

Mr. *C. B. Denison.*

1140. There is a similar case in the adjoining parish of Barlby, is there not?—Barlby has been inclosed some 15 years.

1141. But everybody in Riccall knows what has occurred in Barlby, and the advantage of it?—Yes; I think you will have independent testimony of that.

Chairman.

1142. You said there was one person neutral;

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will you describe his position?—He was a small holder of land and a common-right owner, and his opposition arose in this way; he was one of those whom I described as selfishly overstocking the Dam; having a very small quantity of inclosed land of his own, only three or four acres, he went into the market and bought a large quantity of sheep, Masham lambs, and brought them on to the Dam, to the injury of others, by over-eating the produce; consequently you will understand that he was exercising a selfish right, much more than his rights, and he wished to see things kept as they were.

1143. But putting him out of the question, there was no dissentient?—They were perfectly unanimous.

1144. Is the population of this parish equal, in point of prosperity and in point of *morale*, to the average parishes of the East Riding?—I think decidedly not; but I have taken, by way of comparison, the two adjoining parishes. One is Kelfield, which touches it on one side, and the other is Barlby, where there has been an inclosure, which has been referred to by the honourable Member, which touches it on the other side; and I am prepared to give facts as to the convictions before the magistrates, and to speak to the fact of there being three public-houses in full prosperity in our small population, which I think is rather evidence of a bad state of things; and that we have had, in the year 1876, in a population of 795, four convictions for various crimes.

Mr. *Fawcett.*

1145. What were they?—I can give you the particulars in detail.

1146. I want the general character of them?—One was a poaching case, another theft, and so on; I have all the particulars. In Barlby, with a population of 525, there was no conviction at all during 1876; and in Kelfield there was one order in bastardy.

Chairman.

1147. I will ask you in a general way this question: you are a gentleman living in this parish, and therefore you would naturally have a feeling in its favour?—Of course.

1148. But do you mean the Committee to understand that, in your judgment, the population of the parish in which you reside is not of so high a class as that of the neighbouring parishes?—I do, most certainly.

1149. And do you attribute that to its uninclosed condition?—I do, certainly.

1150. Why did Lord Wenlock not desire this inclosure for some years?—For a long time Lord Wenlock thought, as lord of the manor, that the pressure for inclosure should come from the outside. You see Lord Wenlock has rights both as lord of the manor and as the owner of certain common rights, and he thought the pressure should come from the outside; that was the principal reason of his resisting it.

1151. He has now gone in for it, as we say?—Yes; he has given way to the pressure of other common owners and commonable owners.

1152. When you speak of three public-houses in this place, they are perhaps evidence of a prosperous state of things as regards wages; but was the subject of these inclosures well known and discussed in the tap-rooms of these public-houses?—Yes, there was plenty of talking over it.

Chairman—continued.

1153. Did the Assistant Commissioner bring all these considerations and counter-considerations before the notice of the meeting?—I thought most thoroughly. I thought he took particular care to carry out every direction of the Act; I thought he was most patient and careful. He spent a very long day, and I spent it with him; and he went into every cottage garden, I believe.

1154. I think 10 acres of allotment ground are to be assigned under this scheme; is that so?—Yes.

1155. Why was that particular number selected?—If you look at the answer to the question you will see that we left that matter entirely in the hands of the Commissioners. We said that no allotment had been decided upon; that an allotment was to be given both for recreation and for gardens, but that we would leave the situation and the area, and so on, in the hands of the Commissioners; and when they found that already there were 12 acres of allotment gardens available for the poor, and that those allotment gardens had been available for the poor during two generations on an entailed property, that they were available in the hands of the late Lord Wenlock, and available in the hands of the present Lord Wenlock, and that there was no probability of those allotments being diverted as long as they were required, I suppose they thought that 10 acres was amply sufficient to provide for the wants of the parish.

1156. Is the population an increasing or a decreasing population?—Hitherto it has been a slightly decreasing population.

1157. Would not inclosure be likely to increase it, on your own showing, on account of the amount of capital that would be spent upon it, and the consequent increase of labour?—During the reclamation works an addition to the labourers would be temporarily required, and eventually some small addition; but not so much as would be apparent, because at the present time the labourer is so unprofitably employed, in consequence of the straggling nature of the land, and the fact that if the occupations were concentrated, it would be much more economically employed.

1158. I forget about the recreation ground; is that part of the plan?—Yes, to have four acres; and it is four acres close to the village in the West Field. There was a great difficulty about finding a spot, and the Commissioner went over the whole parish. Various places were pointed out to him, and he fixed upon this. It is exceedingly valuable land, very rich, alluvial soil.

1159. What is the value of it for agricultural purposes?—Quite 3 *l.* an acre, this field.

1160. Why did you select four acres?—We thought that that was ample. I have been a cricketer all my life, and am now, and I know that our cricket ground at Escrick is only two-and-a-half acres, and therefore I think four acres is ample.

1161. Do you state it to the Committee as your opinion, knowing the village and the population, that four acres is ample?—I do, most certainly.

1162. Do you foresee any advantages to labouring districts from the communications that will be made over this commonable land and this waste?—Yes, very material advantages. At the

Chairman—continued.

the present time the road to Skipwith and North Duffield, and so on, is across the common, and is a mere track, and good roads would be a great advantage.

1163. I think in the report it is stated that there are as much as 12 acres of allotment land already in the hands of the cottage tenants?—Yes.

1164. Is that tied up with the cottages so that one goes with the other?—No, not at all; it is perfectly independent of the cottages; only a portion of the cottages belong to Lord Wenlock.

1165. What tenure are those cottage garden allotments held under?—Just the same as the cottages, a yearly tenure; they are let at moderate agricultural rents.

Mr. *C. B. Denison.*

1166. The allotments would be legally subject to withdrawal at the pleasure of the life-tenant?—Yes; I would say that the land selected for the proposed allotment is in two portions, one of six acres and the other of four acres, to suit the convenience of the village, and in both cases the land is of very high agricultural value, and requires in one case no outlay, and only a very small one in the other, to render it fit for the purpose; so that there would be an accumulating fund from the agricultural rent, which would soon return a handsome sum to buy more land if it were wanted.

Lord *Henry Scott.*

1167. To whom does the land belong that is proposed to be set apart for a recreation ground?—It is commonable land; both the recreation and the allotments for gardens are commonable land.

1168. Part of the land which all the owners of rights have a right to at present?—At certain seasons; it is what is called Lammas land in the south of England.

1169. I see that in sub-section 2 of clause 4 of the Act, these words occur: "The determination of the persons by whom, and the mode and place or places in which, and the times at which such rights are to be exercised." That would give the power under regulation, if it was thought advisable, to apply it in this case, to regulate the time at which pasture should be taken on the open land?—But this is not pasture; the commonable land is nearly all arable.

1170. Is there no waste that is pasture?—Yes, the common is supposed to be pasture, but practically it is heather, and gorse, and so on.

1171. I understood you to say that there was a great difficulty at present in doing anything to improve the pasture of that land on account of the times of stocking, because people were able to stock it at all times of the year?—Yes.

1172. Then under that sub-section of the Act of course that could be arranged if regulation was thought advisable?—That answer applied only to the portion of the waste known as the Dam, 114 acres, which is now a valuable pasture.

1173. It does not apply to the 492 acres of common and waste?—No, it does not.

1174. How is it stocked?—Well, it is not stocked; there are some half dozen cows turned out, and a few horses, that is all that goes upon it, because practically it is not grass; it is very rough poor stuff.

Lord *Henry Scott*—continued.

1175. Are there owners of cottage rights apart from others?—The common rights are attached to cottages or dead fronts, where cottages have been messuages; the cottage, of course, stands on some land; the whole of the rights are attached to those cottages or fronts.

1176. But are there small cottage rights, the right to keep one cow, for instance?—No, it is without stint; there is no regulation of any kind.

Mr. *Pell.*

1177. I suppose the Dam is so severely stocked that you have no interlopers who come from the outside with a view of stocking it at any time of the year?—No, and they would not be allowed to do it.

1178. Who would interfere?—A bye-law would interfere; a court would keep them off.

1179. Is there a court?—Yes.

1180. Is there a manor?—Yes.

1181. Who is lord of the manor?—Lord Wenlock.

1182. He appoints a pinder?—No, the court does that.

1183. He keeps up a pound to put the interloping animals in?—Yes, there is a pound.

1184. Is there any copyhold in Riccall?—Yes, a considerable portion of the commonable land is freehold.

1185. Then when the waste comes to be inclosed, the allotments that are made to owners of property, copyhold property, will be copyhold allotments?—They will still be copyhold allotments; it will not interfere with the manorial rights.

1186. They would be copyhold allotments?—Yes.

1187. Are the fines certain, or arbitrary?—It is two years' improved rent.

1188. Then, of course, the value of the manor will be very much improved?—Yes.

1189. Have the copyholders in any way expressed their disapproval of the inclosure?—With the exception of the neutral gentleman whom I alluded to, they were unanimous. You will find that there were a very large number of signatures both to the original proposal and to the Provisional Order.

1190. Have all the notices been given with reference to the inclosure that ought to be given?—Yes, we followed out very strictly the wording of the Act.

1191. Have you heard of anybody expressing disapproval of the proposal to inclose;—No, not in the least; quite the contrary. I might say that gentleman who was neutral at the meeting signed the petition agreeing to the Provisional Order; so that he, probably, thought better of his objections.

1192. Do you think that anybody in the world would be worsted by this inclosure?—I think, on the contrary, there would be great improvement to the owners, and great improvement to the neighbourhood.

1193. You do not think that the poor men would be worsted by it?—Not in the least.

1194. But they would be bettered by it in consequence of the larger amount of labour required in inclosing, and in the subsequent cultivation?—Certainly. I could give you some figures if you desired it.

1195. Now as to the recreation ground, you

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are a cricketer, yourself?—Yes; rather an old one, now.

1196. Supposing this ground is set out as proposed by the Inclosure Commissioners for recreation, do you think it would be adequate for carrying on a game of cricket?—Certainly.

Chairman.

1197. If the Committee thought otherwise, I, suppose there would be no great difficulty in adding a few acres?—Well, I will not say that.

1198. You are not authorised to say that?—I am not authorised to say that.

Mr. *Pell.*

1199. You think that four acres would be sufficient to carry on a game of cricket?—I am sure of it.

1200. Is cricket a popular game in that part of the county?—It is the only game they play, and they do not play cricket much.

1201. Supposing there was an enthusiasm in favour of cricket, there would be room for it to be gratified on the four acres?—Yes, certainly.

1202. Now did you not say that this four acres that was to be set out for recreation ground is very valuable ground?—I did.

1203. Am I right in conjecturing that if there was a desire to have a larger area of ground (under the Act, we know this recreation ground can be sold or exchanged), it is so valuable that a larger area of inferior ground might be got by exchange or purchase?—Less conveniently situated, certainly.

1204. Have you ever heard anybody express a desire to have the recreation ground of Riccall made larger?—No, not at all.

Mr. *C. B. Denison.*

1205. What is the entire acreage of Riccall, as compared with the commonable land?—The whole acreage is 2,666 acres; then the waste is 606 of that, and the commonable land is 745, so that that is 1,350 acres; it is about one-half.

1206. In paragraph 16 of the Commissioners' Report it is said that there is no town green or village green in the parish?—There is not.

1207. Do the inhabitants of the village rear geese, poultry, or anything of that sort?—They rear geese.

1208. Where do they do that?—The owners of common rights, or the tenants who exercise rights in respect of their tenancies, put them on the Dam.

1209. And would their privileges in this respect be prejudiced by this inclosure?—No, I think not, because they would have so much land set out for each common right; they would have just the same in severalty.

1210. Do the inhabitants of Riccall at large thoroughly understand the grounds which is proposed to be set apart for the village green for recreation?—Yes, certainly; I must tell you that the nearest point of the common to the village is quite a mile, and they do not use the common at all for recreation purposes; it never has been used at all.

1211. But then these four acres, I think, are a good distance, are they not?—No, indeed; close to the village.

1212. In paragraphs 19 and 20 of the Commissioners' Report, it is said that "There are about 120 cottages, and about one-half of them

Mr. *C. B. Denison*—continued.

have gardens of less than about 20 perches, or no garden at all. Lord Wenlock lets out at present about 12 acres in garden allotments, mostly of a rood each, and they are all occupied. It is proposed to set out" (as you have told the Committee) "10 acres for garden allotments for the poor in the open field land," in order to suit the convenience of the cottagers as to distance. Will the position of the cottagers who will receive allotments in those 10 acres be different from that of the cottagers who hold under Lord Wenlock?—Only in so far as there might be any difference in the value of the land, no other.

1213. But the cottagers who hold under Lord Wenlock would be merely tenants-at-will, yearly tenants?—So I imagine the others would be; I do not know how that point is; they would surely be able to give up their gardens if they wished it.

1214. Would they have the right of sale and transfer?—I do not know; it is the overseers, I understand, who are to be the trustees.

1215. And I think you have told the Committee that these cottagers who hold under Lord Wenlock, are so well assured of the continuance of their allotments, that they are not at all anxious or desirous to be brought under the new allotment of land?—If the allotment was offered to them at a less rent, in proportion to the value of the land, they would go for the 10 acres; that is the only reason I can give.

1216. At what rent are these allotments?—About 40 *s.* an acre, Lord Wenlock's allotments; but the land that has been proposed to be set out is of a higher value even than those; 50 *s.* as arable land; that would be the rent at which it would let.

Mr. *Fawcett.*

1217. There were 45 people present at this meeting in the evening, were there not?—I do not remember; I believe that is all in the Inclosure Commissioners' Report.

1218. You have the list of the people before you, have you not?—Mr. Wood took the list of the people present at the evening meeting, and I think you will find it in his report. (*The Assistant Commissioner's Report was handed to the Witness.*)

1219. Having that list before you, would you tell me how many of those who were present will not have land in severalty, supposing this inclosure takes place; or, in other words, how many of those who were present were not pecuniarily interested?—There seem to me to have been half-a-dozen. William Benson, a labourer; Henry Moss, a labourer; George Harrison, a labourer; William Gott, a labourer; and Thomas Tomlinson, a labourer. Then there is another man here, Robert Blanchard, of Riccall, farmer and hay dealer; he is only a tenant.

1220. Are you quite certain that none of those had common rights, and would receive land in severalty if the inclosure took place?—I am perfectly certain of that.

1221. The independent portion of the meeting, then, was represented by five?—Yes; and a very good representation too.

1222. Do you know under whom those men held their cottages?—I do, most of them. William Benson, labourer, is a tenant of Lord Wenlock's; Henry Moss is a tenant of Lord Wenlock's; and Thomas Tomlinson is a tenant of

Mr. *Fawcett*—continued.

of Lord Wenlock's; the others are not tenants of his.

1223. You do not know as to them?—No, I do not.

1224. Then three out of the five are tenants of Lord Wenlock's; yearly tenants, I suppose?—Yes.

1225. With powers to give them notice to quit at six months?—Yes.

1226. I think you said you could prove the low social condition of Riccall by specific facts, comparing its condition with two neighbouring parishes, one of which has been inclosed: now I will ask you first of all, what is the state of Riccall with regard to pauperism when compared with those other two parishes?—I cannot tell you; I am not a guardian, and I really do not know the comparison.

1227. But just the same trouble that enabled you to look up the criminal statistics would have enabled you to give statistics as to pauperism, would it not?—Well, it would have been additional trouble, but that might have been obtained.

1228. Then you have no facts whatever (I am only wanting to find out the facts) as to the amount of pauperism?—I have not.

1229. Do you know how the matter stands with regard to another specific fact, which is some indication of the social and moral condition of the place; do you know what the population of Riccall is, and its acreage, which you have told us, when you compare it with the population and acreage of the other villages?—Yes, the population, I gave you that.

1230. But I mean with the acreage?—I think it can be given by independent testimony afterwards; I think the gentleman who follows me will be able to tell you that, because he lives in Kelfield, and he is the deputy chairman of the poor law guardians.

1231. And he will be able to answer as to the pauperism also, I suppose?—Very likely.

1232. Was there any other specific fact on which you based the condition of this village?—There was my knowledge of the plac,e and my knowledge of the other places; and I am sure I am right. I am not going to paint Riccall as a very wretched, demoralised place. I am not going to say that it is a second Barrowden, I am thankful to say.

1233. You have no other statistical facts which you would like to bring before the Committee?—No, I have lived in the place for several years, and I know pretty well what I am talking about.

1234. But that is not a direct answer; I ask you a very simple question?—I have no other statistical facts.

1235. With regard to the cost of inclosing these lands, I understood you to state, that the 1,300 acres odd would cost about 15,000 *l.* to inclose?—I estimate that.

1236. Then, according to your estimate, it would be about 11 *l.* an acre?—Yes, fully that.

1237. And may I take that estimate as an estimate of the cost of inclosing the common fields?—I should say the larger expense would be the common. I should say the common would be more expensive to inclose than the commonable fields; perhaps the figures would be 10 *l.* and 15 *l.*

1238. According to your estimate then, it would cost 7,450 *l.* to inclose the common fields?—Yes, about that.

Mr. *Fawcett*—continued.

1239. I understood you that the reason why the owners of these common fields would not accept the proposal for their inclosure, unless they could have also the 606 acres of the waste of the manor inclosed, was this, that the outlay would be so large, that it would not pay them to have an inclosure on those terms?—That is so.

1240. Then, taking your own figures, I find that you estimate that the increase of that on the 745 acres is 15 *s.* an acre, at least; you put it as high as a pound?—I do not think you have any evidence of mine to that effect. I gave you a comparison of the rateable value; I never said anything of that sort.

1241. I think I need not put it higher than this; I think I understood your evidence, that one of the great arguments in favour of inclosing these common fields is, that it would so very much improve the agriculture, that land which is let here for only 1 *l.* an acre, is really in neighbouring parishes let at 2 *l.* an acre, land of the same quality, I mean?—I am not aware that I said that at all. I said that the rateable value of the inclosed land at Riccall was from 30 *s.* to 40 *s.* an acre, and that the rateable value of the commonable land was a trifle over 1 *l.* an acre. That is all I said on the subject. I calculate that 3 *l.* an acre would be the increased produce of the commonable lands.

1242. I understood you to say that by the inclosure agriculture could be carried on so very much more economically, that the cost of cultivating this land would be diminished?—Yes.

1243. That is one of the advantages to be gained by inclosure?—You apply your labour more economically; you get a better result from the outlay of a certain amount of labour, no doubt about that.

1244. Then you have on the one side an economy of labour, and not only an economy of labour, but an increase of produce, which you estimate at 3 *l.* or 4 *l.* an acre?—Yes, but you have an increase of outlay also.

1245. What do you estimate the increased value of the commonable land at as shown in the increase of rent?—From 10 *s.* to 1 *l.* an acre.

1246. When I said to you just now, that you estimated it at 15 *s.* an acre, I took the medium between the two figures you gave, and you said I was wrong?—I said, I did not state that.

1247. You do state it now?—Yes.

1248. Seven hundred and forty five times 15 *s.* is, in round figures, 550 *l.*; that would give a very fair return on the money expended?—The return from the common would be very much better, because it is worthless now.

1249. But suppose Parliament says (which of course Parliament has the power to do), "We will not inclose the waste of the manor, but if the owners like, we are perfectly willing to sanction the inclosure of the common fields;" I have not, of course, the smallest authority to say that that will be the decision of Parliament, but is there any ground to show that the inclosure of the common fields on those terms would not be remunerative to the owners; of course it would be more remunerative if they were allowed to inclose the waste of the manor, but is there any ground to show that the in-

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19 June 1877.

Mr. *Fawcett*—continued.

closure of the common field on those terms would not be remunerative to the owners?—No, I think not.

1250. Therefore, if there is no ground to show that the inclosure on those terms would be unremunerative, there is no reason why on that ground it should be resisted by the owners?—Except that they would prefer the other as paying them better.

1251. I fully admit your contention that it would be more remunerative to the owners to have also the waste inclosed?—And to the public too.

1252. But as a fact, it would be more remunerative to the owners to have the waste inclosed as well as the common fields?—Certainly.

1253. Now as to the disadvantages that you have attributed to the present condition of that waste of the manor, which you have described as the Dam pasture, every one of those evils could be cured, or are provided for, by the condition on which regulation takes place under the Bill, are they not?—No, I think not. I mean I think it would be more beneficially occupied in severality than by regulation.

1254. That is not the point; what I mean is this: you say that one of the great disadvantages of leaving the dam pasture in its present position is that it is over stocked; is that the chief one?—That is one.

1255. That can be distinctly provided for in the regulation scheme contemplated in the Act passed last year?—Yes.

1256. Now what other disadvantage is there connected with the dam pasture which could not also be provided for in regulation?—The risk of spreading infectious disease.

1257. Then that applies to every regulation scheme; that is a general objection to all schemes?—It applies to Riccall Dam.

1258. It is perfectly obvious that that is not a particular objection to this, but a general argument against allowing the cattle in common to go to any pasture?—It is a special disadvantage of regulation over inclosure in this case; I cannot answer for other cases.

1259. But now what other disadvantage is there?—No other, I think. If it was properly regulated, both as to time and quantity of stock, no doubt the Dam could be pastured.

1260. But that is a regulation of the pasture; with regard to the time of putting on the stock and the amount of stock, that is one of the things that is specially provided for in the recent Act?—I know that.

1261. And, therefore, a regulation scheme could do that?—So far.

1262. Of course, with regard to these allotment gardens, there is nothing whatever (I am not for a moment insinuating that Lord Wenlock would do it) legally to prevent every one of these allotment gardens being let, not at its agricultural value, but at a rack rent?—Nothing at all.

1263. Such a case as that under the Inclosure Act of last Session is specially provided against with regard to the allotment gardens which are allowed by that Act?—Yes.

1264. And unlike the allotment gardens which belong to a private individual, and which may be let at a rack rent; the allotment gardens appropriated to the poor under the Inclosure Act cannot be let at a rack rent, but must, under the terms of the Act, be let at a fair agricultural rent?—So I understand.

Mr. *Fawcett*—continued.

1265. And therefore the pecuniary conditions of the tenure under which the public allotments and the private allotments will be held, may be very different; I do not say that they will be in this case, but they may be?—Yes, they may.

1266. I understand that these allotments of Lord Wenlock's are let, generally speaking, in the quantity which is contemplated in the Act, namely, a quarter of an acre?—Yes, about a quarter of an acre; sometimes it is half that quantity, but only very few cases.

1267. I want to find out how many of the cottages are not provided with allotments from these allotments of Lord Wenlock's; am I correct in saying that 48 of them were provided for by Lord Wenlock?—It would be about that, taking them at a quarter of an acre each.

1268. Then there are 120 cottages at the present time in Riccall?—Yes, some of them have more than a quarter of an acre of garden allotment.

1269. That would leave about 76 that would have to be provided for out of these 10 acres?—I think not, because some of them have already garden allotments.

1270. Will you read what the Commissioners' Report says: "There are about 120 cottages, and about one-half of them have gardens" (that is about 60) "of less than about 20 perches, or no gardens at all." And those 60 evidently have to be provided for. "Lord Wenlock lets out at present about 12 acres in garden allotments, mostly of a rood each, and they are all occupied." That is all that is said about it, but the other portion have considerable garden land attached to them, in many cases more than half an acre, sometimes three roods, so that they really would not come under the requirements.

1271. And of the advantages which I understood you to attribute to the inclosure of the waste of the manor of the 492 acres is, that it would enable a path to be made across the common to Selby?—No, to Duffield and Skipwith, and so on.

1272. And that that road now, in the present state of the common, is only a track?—It is not passable by carts, and so on.

1273. One of the things that is contemplated distinctly in regulating a common is, that in cases where it is desirable a road could be made, or a bridle path, by the recent Act?—Yes, under regulation, I suppose so.

1274. Therefore, so far as that advantage is concerned with regard to making a road across the common, that could be carried out by regulation without inclosure?—If agreed to.

Mr. *Leveson Gower.*

1275. Can you say what is the value of the land which is to be devoted to the recreation ground?—I should say 100 *l.* an acre.

1276. I understand from you that the inclosure of the commonable land would not increase the amount of labour, though it would increase its efficiency?—Not materially increase it. I think it would render that so much more economical which was used.

1277. But I suppose the inclosure of the waste would

Mr. *Leveson Gower*—continued.

would considerably increase the demand for labour?—Yes.

1278. And increase it considerably more than if the waste was regulated?—Certainly.

1279. You stated that Lord Wenlock and his father granted them allotments; has the amount of allotments been increased since they were first granted?—I think not. I think they have been equal to the demand. I think there are the same allotments now as there were.

1280. Then there is no great demand for these allotments?—No great demand for them.

1281. When one falls vacant there are not many applicants for it; is that so?—There are generally two or three applicants; they are let, but I am sorry to say that some portion of them are very badly farmed, very badly managed.

1282. Are they turned out ever for neglecting their allotment grounds?—No, I am afraid they have not been; I think they almost ought to be; they are reprimanded occasionally.

1283. As long as they pay the rent they are left alone?—Yes, that is very much the case.

Sir *William Harcourt.*

1284. I think that, if this scheme passes, the amount of allotment in proportion to the population will be considerably less than in the Luffenham or Barrowden?—Yes, that seems so.

1285. The whole quantity would be, even taking in Lord Wenlock's land, 22 acres to

Sir *William Harcourt*—continued.

divide among 120 cottages, would it not?—No, it is only 60 cottages. You will see that conclusion especially guarded against in the Report, I think.

1286. Why do you say only 60 cottages?—Because the other 60 cottages have over a quarter of an acre; some of them three-quarters or half an acre of land attached to them.

1287. Do you mean in their own right?—Yes.

1288. Mr. Leveson Gower asked you what would be the value of this land to be devoted to recreation, and you said about 100 *l.* an acre; what do you think will be the improved value of the land in the parish, taking it as a whole, in consequence of inclosure; how much do you estimate that the value per acre will be raised?—You must divide it rather, because you see that there is a large portion of the common which has very little value at all, upon which you would not put above 2 *s.* or 2 *s.* 6 *d.* an acre as the grazing value of the common at the present time. I should think it will be worth 30 *s.* an acre, if it gets marled and drained.

1289. That would be an increase of 28 *s.*?—Something like that on 500 acres.

1290. That will represent a very large capital sum?—£. 750, I think.

1291. I think you might afford to give a little more recreation ground, might you not?—We did not think it was wanted, or the Inclosure Commissioners did not think it was wanted.

Mr. *Coleman.*

19 June 1877.

Mr. Jonathan Dunn, called in; and Examined.

Mr. *Dunn.*

Chairman.

1292. Where do you live?—At Kelfield.

1293. Is that an adjoining village to Riccall?—Yes, it is.

1294. Are you a farmer yourself?—Yes.

1295. You have had considerable experience in agriculture, I believe?—I have had all my life.

1296. You are chairman, I think, of a Chamber of Agriculture?—Yes.

1297. What is that, the York Chamber of Agriculture?—Yes.

1298. Do you know the whole of this neighbourhood very well?—Yes, I have lived there 40 years.

1299. Have you any interest in this inclosure?—No pecuniary interest; I have a great interest in it as being a matter of a great local improvement, but no pecuniary interest, except indirectly as a ratepayer in the same union.

1300. You mean that now there is union chargeability, the burden of one parish falls upon all the rest of the union?—Yes.

1301. Perhaps you can reply to a question which was asked just now by Mr. Fawcett; can you say anything about the comparative pauperism of these different parishes?—I can compare the pauperism of the township of Kelfield with that of Riccall; but I may just premise that a great many things affect the statistics of pauperism; it is very fluctuating.

1302. We only want your general impression; can you say of your own knowledge anything definite about the pauperism?—I can say this, that Riccall has a population of 795, and on the out-door relief list at present there are 10 paupers in Riccall; then Kelfield has a population of

Chairman—continued.

about 400, and we have on our out-door relief list three.

1303. That does not tell much?—Not much. I looked into the statistics yesterday at our board, and I asked our relieving officer, and Riccall is not prominent in our union for the amount of pauperism.

1304. Did you attend the meetings at Riccall?—Yes, both the meetings.

1305. Should you say, generally, that every opportunity was given for the hearing and receiving of objections?—I am sure there was. Mr. Wood gave a full opportunity for everyone to object or to make any observation; he invited objections and observations.

1306. What is your opinion of the proposed inclosure; do you think it would benefit the parish as a whole; I mean not the parties directly interested, but the parish as a whole?—I do; as an outsider and a near neighbour, I think it would benefit the parish, benefit the whole neighbourhood very much.

1307. What is the present agricultural state of Riccall; is it well farmed?—As a whole, it is very badly farmed, owing, as is well known, to the sub-division of land in these open fields; they cannot farm it properly under those conditions.

1308. What improvement should you anticipate might be expected in the event of an inclosure?—I should have to refer to each lot separately, that is to the common, and the open fields, and to the Dam.

1309. Do you concur in the opinion of the last witness as to the increased value that will be attained by the inclosed land?—Yes, I do.

Mr. *Dunn*

19 June 1877.

Chairman—continued.

1310. Have you anything to say as to the moral condition of the people of this parish as compared with that of the adjoining population?—I can speak as to the moral status of Riccall as generally reported in the neighbourhood, which is, I am sorry to say, not very high.

1311. But I ask as compared with the rest. We do not want to hear anything positive, but something relative; can you draw a distinction between the population of Riccall and that of other places in the neighbourhood with which you are acquainted?—I consider that the moral status of Riccall is much lower than the status of the village in which I reside; there is more drunkenness, and intemperance, and public-house broils; that is my impression.

1312. Do you know the common in Riccall?—Yes, very well.

1313. That is 500 acres nearly?—Four hundred and ninety-two acres.

1314. Do you think it would be improved by inclosure?—Very much improved.

1315. To the detriment of anybody?—To the detriment of no one that I am aware of.

1316. Do you know of any cases in the neighbourhood in which land, similar to the common, has been improved by inclosure?—Yes, in Barlby.

1317. Is that in your parish?—It is an adjoining parish; it is on the south of Riccall.

1318. But you are no more interested in that than you are in Riccall?—Not in the least.

1319. And what do you say about that?—I say that the Barlby Common and Riccall Common join, in fact were one great common; and Barlby some 15 or 20 years ago inclosed its portion and drained it, and now it is in very good cultivation and very good arable land, and growing very good crops; and Riccall Common is very similar land.

1320. Have you ever heard of anybody being prejudiced or damnified by that inclosure in Barlby?—No, but many much benefited.

1321. And you think the condition of the parish, as a whole, was improved by that inclosure?—Yes.

1322. And you anticipate the same result from the inclosure of Riccall Common; is that your view?—Yes.

1323. Do you know the Dam?—Yes, very well.

1324. What do you know as to the condition of the Dam as regards its produce?—It is in grass, and stocked by a promiscuous number of cattle that stray about to the annoyance of all the neighbourhood. My farm adjoins this Dam, and some of my fields, and we are very much annoyed by the cattle straying off the Dam and getting into our fields, and giving us the risk of incurring sheep scab and foot-and-mouth disease.

1325. Has that ever occurred?—Yes, it has. I have got sheep scab from the sheep coming off the Dam, and I am continually in fear of it.

1326. Therefore you would be glad, on your own account, as well as that of the district, to see the Dam dealt with?—Yes.

1327. The commonable lands are 745 acres, are they not?—Yes.

1328. What do you think about the farming of those lands?—The commonable lands are naturally good soil, especially the West field; 500 acres is first-rate soil, but at present they are not half farmed, and cannot be under present conditions.

Chairman—continued.

1329. You said that you had no interest in this proposed inclosure, but being one of the foremost men of the neighbourhood, you are interested in the district as a whole?—Yes.

1330. Are you a member of the board of guardians?—Yes, vice-chairman of the Selby Board

1331. Are you a member of the assessment committee?—Yes.

1332. What have you to say upon the amount of rates that are contributed by these commonable lands, and so forth, to the general funds of the union?—The commonable lands are rated at about 1 *l.* an acre, and the common rights are 2 *l.* each. There are 121 common rights; there are 606 acres, rated at 242 *l.* I may say that we consider that if those were inclosed and cultivated to the best advantage they would be rated at very much more; and that is an injustice to the rest of the union, that land which is capable of being cultivated and improved, has not contributed its proper proportion to the rates.

1333. Have you at all made an estimate of the rateable value which might be reasonably added to the common fund of the Union?—About 1,000 *l.* a year to the rateable value.

1334. About the allotment ground, do you think that 10 acres is enough to be set out under these circumstances?—Yes, considering the gardens attached to the cottages and the 12 acres that Lord Wenlock's tenants have as allotment ground; and, I may say, in reference to those 10 acres of allotment under this Act, that they have put it close to the village; it is the most valuable land, and those interested in the question could well afford to allow double quantity if they went further from the village; but this land is the most valuable and most convenient for the cottagers.

1335. As to the recreation ground, we have been told that it is too small, and perhaps it seems so; what do you say as to four acres of recreation ground?—I think, if I may say so, that the size of a recreation ground should be in proportion, not to the quantity of land enclosed, but to the population and the wants of the population. If this common had been near a large town I should have considered four acres would have been very insufficient; but, for a rural population of some 700, I consider four acres quite sufficient. The four acres that they will have are very much better than the present cricket ground which they have on the Dam.

1336. How far off is that from the village?—The present cricket ground is close to the village.

1337. Then why is the four acres of recreation ground, which is to be allotted, better than the range of the Dam which they had now?—Because of the form in which the land lies in the Dam; it is a long, straggling, narrow strip of land that comes to the end of the village, with a frontage to the road of perhaps 200 or 300 yards, and then runs away quite narrow. I suppose the place which they play in, where they have their matches occasionally, is not 100 yards across; it is a narrow long-lying strip.

1338. You think the shape of this four acres will be much more convenient?—Much more convenient, and I think the recreation ground

Chairman—continued.

ground is a piece of the most valuable land going to be effected by the inclosure. It was chosen by Mr. Wood after two or three suggestions; one was that the recreation ground should be on the Dam, which is close to the village; another was that it should be just across a railway, which is close to the village on the other side; but he objected on several grounds, and he chose, close to the Hall, close to the village, a piece of the most valuable land; and a gentleman told me yesterday he would be glad to give 120 *l.* an acre for it; and the small common right owners with whom I have conversed would be very glad to give double or treble the quantity on the common.

1339. You speak of the small owners; have you had an opportunity of knowing what the general feeling in the place is?—I have, indeed.

1340. Do you believe that if there was any irritation or jealousy in respect to this inclosure, you must have become acquainted with it?—Yes.

1341. You have heard no such feeling expressed?—There is an universal feeling in favour of it. Everyone in the neighbourhood sees that it is a very desirable improvement.

Lord *Henry Scott.*

1342. I think you said that your land adjoins this common land?—Adjoins the Dam.

1343. And you suffer a considerable amount of annoyance, did I understand you to say, from the straying of cattle over your land?—Yes, continually.

1344. Therefore, I suppose it would be very materially to your advantage that this inclosure should take place, would it not?—It would so far as that goes in reference to the straying of cattle; that is the nuisance that affects me most in the present state of things; I should be benefited in that respect.

1345. Then while you have no absolute interest in the inclosure, one way or the other, you consider that you will be benefited by it?—To that extent, which is not very material.

Mr. *Fawcett.*

1346. Would you be benefited in your capacity as a ratepayer, as an owner, or an occupier?—Both.

1347. Who do you occupy from?—Mr. Preston, of Moreby.

1348. The great advantage which you attribute to the inclosure of the Dam, so far as you are concerned, is that it would be fenced to prevent cattle straying?—That is the point I simply spoke to, as it directly affects myself. I did not speak as to the general improvement of the Dam.

1349. But you could be secured against the annoyance you suffer in that respect, if the Dam were not enclosed, but were regulated?—Yes, if you prevented the cattle straying.

1350. Also your objection to the Dam remaining in an open condition, namely, that cattle are mixed there, applies equally to every single part of the country held in common; it is a general agricultural objection to any land being occupied in common, is it not?—And a very strong objection, too.

1351. Still it is not a special objection confined to this case?—I am only affected by this case; I feel the effects of it.

1352. With regard to these allotment gardens,

Mr. *Fawcett*—continued.

you think it is sufficient that 10 acres should be appropriated, because they already have 12 which are simply private property?—They have 12, I understand, and small portions adjoining the cottages as well. I think 10 acres would be sufficient.

1353. Considering that they have 12 acres which are private property?—Yes.

1354. Do you think that a great addition would be made to the value of the common field lands by inclosure, that it would be extremely remunerative on the outlay which the inclosure would involve?—I do.

1355. That, in fact, this would be a remarkably good pecuniary speculation?—No doubt.

1356. And, therefore, even if the common fields were inclosed without the waste of the common, although inclosing the waste of the manor would be still more advantageous to the owners of the property; still, so far as the common fields alone are concerned, it would be highly remunerative?—Yes, so far as the commonable lands alone are concerned.

1357. You are a vice-chairman of this union, are you not?—Yes.

1358. And Riccall is one of the populous parishes in it, is it not, as far as the agricultural parishes are concerned?—We have five or six quite as populous, or rather more so.

1359. Still it is one of the important parishes?—Yes.

1360. No doubt, as vice-chairman of the board of guardians, you must have been struck with the fact that far from Riccall, according to the statistics you have given us, exhibiting any such amount of pauperism as we should expect from the low social condition which it is described as being in, it shows an amount of pauperism very much below the test of the agricultural parishes of England. You have given us the figures, that there are 10 persons in receipt of out-door relief out of a population of 795?—Yes.

1361. That is one in 79?—Yes.

1362. Are you aware of the fact (if not I will put it in evidence) that there are parishes in which there is not a single acre of uninclosed land, and in which one out of 20 are in receipt of parochial relief, agricultural parishes?—I am not aware of that. May I explain that there is a great difference in the unions in administering the poor law, and in our union we are very strict indeed in the matter of administering out-door relief; in fact, we make it nearly a question of the workhouse test; as the wages of the agricultural population are so much better than they used to be, we do not encourage the giving of out-door relief at all, but discourage it as much as we possibly can.

1363. What is the in-door pauperism of this place; how many people are at the present time in the union from Riccall?—I do not know.

1364. But you have evidently looked at the pauper statistics yesterday; you have been in this Committee-room during the days when the evidence has been given, have you not?—I was here on Friday.

1365. And did not you hear me press then for some statistics as regards pauperism?—I can tell you pretty nearly from memory what the figures are.

1366. If you find that your statistics are incorrect, of course they can be easily corrected

 afterwards;

Mr. *Dunn.*

19 June 1877.

Mr. *Fawcett*—continued.

afterwards; but you know that there are 10 persons in receipt of out-door relief?—Yes.

1367. And how many are in receipt of in-door relief?—I should think three or four.

1368. Then taking the largest number, that represents an aggregate amount of pauperism of actually 14 out of 795; that is, including both out-door and in-door relief, about one pauper out of 50?—Yes.

1369. Now, from your general knowledge of pauperism, do you know of any place in England which can show a smaller amount of pauperism than that?—Do you mean any village?

1370. Yes, any village, or town, or any agricultural district. The fact I want to bring out is this, that this place which is described to us as being a place in a low social condition, is a place which the figures you yourself have given us show, so far as pauperism is concerned, to be one of the most exceptionally favourably situated in the country, and I therefore ask you this question: I want to know whether you can produce any district in England, or any parish in England, where there is not uninclosed land in which there is so little pauperism as one out of 50 of the population?—My own parish has fewer paupers.

1371. What is the population there?—About 400. We have three out-door paupers on the list.

1372. How many in-doors?—Not one.

1373. That is smaller, therefore?—That is smaller. I may say, by way of explanation, that I do not think that Riccall varies very much from the rest of our union, leaving out Selby; Selby is a town of 7,000 for its population, and the conditions are different.

1374. As far as pauperism is concerned, there is practically no difference in the amount of pauperism in Riccall compared with any other place in your union?—Not much. I put that

Mr. *Fawcett*—continued.

question to our relieving officer yesterday, and he said that Riccall was about on a par with the rest of the union. But may I be allowed to add an observation in reference to the moral state, that there may be a great deal of intemperance and drunkenness, and not so much pauperism.

1375. Do you not think that if there is more immorality and intemperance, it generally results in pauperism?—I do.

1376. But so far as any facts go (you will understand the drift of my question), there is nothing to show that Riccall is in the low condition which has been described to us?—So far as the statistics I have given you go; but I still adhere to the observation I made before, that it is considered, morally, a low village; there is a great deal of drunkenness, certainly there is that, no one can deny that.

1377. With regard to the villages which have been inclosed, which you have compared the present condition of with the condition of Riccall, which has not been inclosed, take first Barlby; what is the acreage of Barlby, and what is the acreage of Riccall?—I have not the acreage of our union; I have not prepared myself with that.

1378. You cannot say that that inclosed parish supports a greater number of people in proportion to the area of its land than Riccall does, which has not been inclosed?—No, I cannot say that.

1379. Do you know whether Barlby is a very much smaller parish than Riccall?—It is.

1380. Do you know approximately its acreage?—I do not; so it is no use giving a random answer.

1381. You went simply as one of the outside public to this meeting at Riccall, not as having any pecuniary interest in the inclosure, as I understand you?—Yes, that is so.

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Appendix, No. 1.

NOTICE issued by the INCLOSURE COMMISSIONERS previous to the meeting of the SELECT COMMITTEE.

COMMONS ACT, 1876.

THE Inclosure Commissioners for England and Wales hereby give notice that the Provisional Order in the matter of the proposed of , situate in the parish of , in the county of , will be considered by a Committee of the House of Commons, on the day of next, or on some later day to which the said Committee will be adjourned.

And they further give notice that any person desirous of appearing before the said Committee, in opposition to such Provisional Order, must communicate his name, address, and description, with a short statement of the grounds of his ojection, to

on or before the day of next.

Witness my hand this day of 187 ,

By Order of the Board.

Appendix, No. 2.

PAPER handed in by Mr. *George Ridley*

Appendix, No. 2.

COUNTY OF RUTLAND.

INCLOSURE COMMISSION.

BARROWDEN INCLOSURE.

— 1. —

APPLICATION to the Inclosure Commissioners for England and Wales for a Provisional Order for the Inclosure of a Common under the Provisions of "The Inclosure Acts, 1845 to 1876."

THE land to which this application relates is situated in the parish of Barrowden, in the county of Rutland, and is commonly known as the Commons and Open Fields situate in the parish of Barrowden, in the county of Rutland.

WE, the undersigned, being persons representing at least one-third in value of such interests in the land above mentioned as are to be affected, propose the inclosure of such land, under "The Inclosure Acts, 1845 to 1876," and submit to the Inclosure Commissioners for England and Wales the information in respect to such land, and to the proposed inclosure, required by the questions hereunto annexed, believing such information to be correct: And we hereby apply to the Commissioners, if satisfied that it is desirable, to issue a Provisional Order, and to certify that it is expedient that such Provisional Order should be confirmed by Parliament.

(signed) *Exeter.*
Aveland.
Charles James Dyer.
John Shelton.
William Whitmee.
Thomas Wood.
Robert Shelton.
Henry Mason.
Edward Cliff.
James Eady.
Thomas Swift.
Thomas Swann.
Daniel Richmond.
Jos. Phillips.
Geo. Baker.

INFORMATION to be furnished to the Inclosure Commissioners respecting the Common to which the foregoing Application relates.

1. What is the extent in statute acres of the land proposed to be inclosed, and from what source was the area obtained?	About 1,900 acres.
2. Does the land lie together? If in separate tracts, what is the acreable extent of each?	Yes.
3. Is the land proposed to be inclosed waste and uncultivated land, arable, meadow, pasture, or woodland? If of different kinds, what is the acreable extent of each?	About 200 acres pasture.
4. What is the nature of the soil?	Every description, from light loam to clay.
5. Does any part of the land abut upon the shore of the sea, or of a tidal navigable river?	No.
6. Are there any open mines, or any minerals, or valuable strata, now in course of being worked, or known to have been formerly worked, or known or supposed to exist in or under the land? If so, what is the nature of these mines, minerals, or valuable strata, and the extent of the workings, if any; and is the property of these mines, minerals, and valuable strata separate from the ownership of the soil, or otherwise, and are they worked by the owners or by lessees?	None.
7. Is the Crown interested in any part of the land?	No.
8. Is all, or any, and if any, what part of the land proposed to be inclosed, waste land of a manor, on which the tenants of such manor have rights of common? If so, give the name of the manor and of the lord.	The heath, containing about 290 acres, is stocked by the inhabitants of Barrowden and South Luffenham, but disputes exist as to the proportion of the heath which either parish has a right to stock, and the stint thereon.
9. Is all, or any, and if any, what part of the land proposed to be inclosed, subject to rights of common which may be exercised at all times of the year for cattle levant and couchant upon other land, or to any rights of common which may be exercised at all times of every year, and which are not limited by numbers or stints?	Only the waste. *See* No. 8.
10. Is the land proposed to be inclosed, or any, and what part of it, subject to any, and what, rights of common not mentioned in questions 8 and 9, or is all, or any, and what part of it, gated or stinted pasture, or what are the rights affecting such land, or the several tracts, if more than one, which are supposed to make it subject to be inclosed under the Inclosure Acts, 1845 to 1876?	The coppice, leys, shire oaks, and mole hills stocked by the common right owners of Barrowden with great cattle on the 13th May, with sheep on the 12th August, 98 A. 3 R. 17 P. The cow pasture Lammas land laid at Lady-day and broke at 12th August, belonging to the Marquis of Exeter, 110 A. 3 R. 38 P.
11. Is the common, or any part thereof, situate within the Metropolitan Police District?	No.
12. Is the common a suburban common, that is to say, is it situate either wholly or partly, in any town or towns, or within six miles of any town or towns?	Yes.
13. State the distance of the common from any neighbouring towns or villages, and the population of such towns or villages?	It is within six miles of Stamford, containing 8,344 inhabitants; Uppingham is distant five miles with 2,186 inhabitants.
14. What is the number of the inhabitants of the parish, township, or place, or several parishes, townships, or places, in which the land proposed to be inclosed is situated, according to the last Parliamentary Census?	Six hundred and thirty-six.
15. What	Almost

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15. What are the chief occupations of the inhabitants; agricultural, manufacturing, or otherwise; and what kinds of manufactures, if any, are chiefly carried on?	Almost entirely agricultural. There is a manufactory of rugs, parchment, &c., employing 25 to 40 hands.
16. Is there any town green or village green in the parish or place within which the land proposed to be inclosed is situated, or any ground other than the common available for the recreation of the neighbourhood? If so, give particulars as to area, situation, and character, and to what extent it is used by the public for recreation?	There is a green in the village which it is proposed shall remain uninclosed.
17. Do the inhabitants of the neighbourhood resort to the common for purposes of recreation? And is any particular part used for playing games?	No.
18. Is it proposed that any, and if any, what allotment should be made for recreation ground? Is the land proposed to be so allotted conveniently situated, and otherwise suitable for the purpose?	Yes, it is proposed to leave the quantity to the Commissioners.
19. State the number of cottages in the neighbourhood, and whether or not they have gardens attached; give information as to the average size of such gardens, and as to any other land now available for gardens for the poor inhabitants?	There are about 68 cottages, of which 40 have gardens of about the average of half a rood each. There are 37 allotment gardens now let to the poor, partly belonging to the Marquis of Exeter, and partly to the Rector of Barrowden.
20. Is it proposed that any, and if any, what allotment should be made for field gardens? Is the land proposed to be so allotted conveniently situated, and suitable for the purposes of cultivation as gardens?	This is proposed to be left to the Commissioners.
21. Do the applicants suggest that, for the benefit of the neighbourhood, any of the following terms and conditions which may be applicable, should be inserted in the Provisional Order? (1.) That free access be secured to any particular points of view; (2.) That particular trees or objects of historical interest be preserved; (3.) That there be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation at such times, and in such manner, and on such parts of the common as may be thought suitable; (4.) That carriage-roads, bridle-paths, and footpaths over the common be set out in such directions as may appear most commodious; (5.) That any other specified thing be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.	No.
22. If the lord of the manor is entitled to the soil, what allotment has been agreed or is proposed to be made to him in respect of his right and interest, and is the allotment proposed to include a compensation for his interest in all or any of the mines, minerals, and sub-strata?	Yes; the lord of the manor is owner of the soil, but no agreement has been made, and it is proposed to leave the value of the manorial rights to the Commissioners or the valuer.
23. What is the number, so far as can be ascertained, of the parties interested as owners of the soil, common rights, or otherwise, in the land proposed to be inclosed? How many of the persons so interested have assented to this application?	About 30. Of these, 14 have signed the present application. The total quantity of land, without reckoning the commons, is 1,638 A. 1 R. 36 P., of the value of 3,594 *l.* 6 *s.* 4 *d.*
24. What proportion does the value of the interest of the assenting parties bear to the whole value of the interests in the land proposed to be inclosed?	The quantity owned by the parties making this application is 1,456 A. 3 R. 1 P., of the value of 2,992 *l.* 14 *s.*
25. How	Three

25. How many of the parties interested have dissented from the application, and what is the proportion of their interests to the whole value of the interests in the land?	Three persons have declined to join in this application, owning 34 A. 1 R. 10 P., of the value of 126 *l.* 9 *s.* 3 *d.*
26. How have the values of interests been ascertained; by the assessment to the Poor Rate, by number of stints, or how otherwise?	By the assessment of the Poor Rate.
27. Is there any litigation, dispute, or question, as to the boundaries of the land proposed to be inclosed, or the mines, minerals, or strata in or under it? If so, between whom has it arisen?	There is no litigation, but disputes exist as to the parts situate in each of the parishes of Barrowden and Luffenham.
28. Would any exchanges with owners of land not subject to be inclosed, be desirable?	Probably this will be the case.
29. State particularly the advantages anticipated from the inclosure of the common, as opposed to its regulation; and also the reasons why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood.	Increased value and productiveness, and employment of labour.
30. What advantages do the applicants anticipate from the inclosure in relation to private interests?	The throwing together of each owner's property, instead of now being dispersed in several hundred separate pieces.
31. Has any previous application for the inclosure or regulation of the lands referred to in this application been made? If so, give the date of such application.	Yes; January 1871.
32. Name an inn or other convenient place in the parish for holding meetings.	The Exeter Arms Inn.
33. What is the railway station nearest to the common and to the proposed place for holding meetings, and what is the distance of such railway station?	Luffenham Railway Station, distant two miles.
34. Name the places on which it will be necessary to affix notices of public meetings to be held by the Assistant Commissioner, in order to comply with the direction in the 11th section of The Commons Act, 1876, that copies shall be posted on the church door, on or near the common, at the post office, or post offices, at any town hall or vestry hall, or other building or room, the expense of maintaining which is payable out of any local rate; and at all places in the parish or district where notices are usually posted.	The church door. The post office. A sign post near the common.
35. The application must be accompanied by a map on tracing cloth, clearly defining the lands proposed to be inclosed; and by copies of the newspapers containing the advertisement of the intended application; and also, in the case of a suburban common, by proof of service of notice on the urban sanitary authority or authorities.	It will be.

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ASSISTANT COMMISSIONER'S REPORT on Local Inquiry Meetings as to Proposed Inclosure.

Gentlemen, April 1877.

I HAVE the honour to report that on the 5th day of April 1877, I held a public meeting at 11 o'clock in the forenoon, at the Exeter Arms Inn, in the parish of Barrowden, in the county of Rutland, and a second public meeting at the same place, at the hour of seven in the evening of the same day, for the purpose of hearing all persons desirous of being heard on the subject-matter of an application for a Provisional Order for the Inclosure of the Commons and Open Fields situate in the said parish of Barrowden, whether considered in relation to the benefit of the neighbourhood, or to private interests; and for receiving any information or evidence which might be offered in relation thereto.

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It was proved that notice of meeting was posted on the principal outer-door of the Parish Church of Barrowden, on the outer-door of the Baptist Chapel in the parish, and on the wall of the side of the Post Office in the parish, on the 14th day of March last; there is no other place in the parish where notices are usually posted; there used to be a sign-post near the common, but it has gone, and is no longer there; the Open Fields run quite up to the village; the nearest part of the waste is about half-a-mile from the centre of the village; the notices where posted would be better seen than if on the common; the Post Office is close by the village green.

There were present at the morning meeting, Mr. Richardson Thompson, of Stamford, solicitor for, and holding power of attorney from, the Marquis of Exeter, the lord of the manor of Barrowden; Mr. James Martin, estate agent for Lord Exeter, Mr. J. G. Desborough, steward of the hundred of Wrangdyke and manor of Barrowden; Mr. James Flux, from the office of Mr. Travers Smith, London, solicitor for, and holding power of attorney from, Lord Aveland; Mr. James Edward Atler, solicitor, Stamford, as steward of the manor of South Luffenham; Mr. Thomas Sturgess, estate agent for Lord Aveland; Mr. William F. Law, of Stamford, solicitor for Francis Lumby, of Barrowden, freeholder and owner of cottage right, and for the estate of Mr. C. P. Gill, deceased, freeholder and owner of cottage right; Mr. William Shield, of Uppingham, solicitor for Mr. G. D. Rowley, and Mrs. Rowley, his wife, and for Mr. E. N. Conant, Mr. H. Mason, Mr. E. Snell, and Mr. E. H. Baines, all freeholders; Mr. William Gill, of Wakerley, farmer, freeholder, and owner of cottage rights; the Rev. Charles James Dyer, rector of Barrowden, and in right of glebe; Mr. Amos Baines, of Seaton, farmer, and Mr. Edwin Baines, of Ayston, trustees of the late Joseph Baines, farmer and freeholder; Mr. Shield appearing as their solicitor; Mr. Daniel Rickman, of Barrowden, farmer, freeholder, and owner of cottage right; Mr. William Rowlett, of Barrowden, farmer, freeholder, and owner of cottage right with his brother James Rowlett; Mr. William Whitmee, of Barrowden, farmer, freeholder, and owner of cottage right; Mr. William Nichols, of Barrowden, son of Mr. Nichols, farmer, on behalf of his tenant, Edward Cliff, of Barrowden, freeholder; Mr. John B. Pepper, of Wakerley, butcher, freeholder, and owner of cottage right; Mr John Taylor, of Barrowden, butcher, freeholder, and owner of cottage right; Mr. Thomas Wood, of Barrowden, grocer, freeholder, and assistant overseer of the parish of Barrowden; Mr. E. Snell, of Barrowden, surgeon, Mr. Shield appearing as his solicitor; Mr. Richard Boyer, of Barrowden, surgeon, freeholder, and owner of cottage right; and Mr. Henry Mason, of Barrowden, farmer, freeholder, and owner of cottage right.

At the evening meeting there were only present, Mr. Thompson, Mr. Desborough, Mr. Flux, and Mr. Shield, all of whom were present at the morning meeting.

1. The land proposed to be inclosed is commonly known as Barrowden Open Fields, the Cow or Far Pasture, the Shire Oaks, Coppice Leys, and Mole Hills, and also the Heath; the total quantity, estimated from the tithe apportionment, is about 1,925 acres; but as regards the Heath, there is a dispute between the parishes of Barrowden and South Luffenham as to whether it is in the parish of Barrowden or South Luffenham, except that a small part of it, called Flasket Leys, is admitted to be in the parish of South Luffenham. There is a contemporaneous proposed inclosure of lands in South Luffenham, and the Heath is included in that application. There are two questions in dispute with reference to the Heath, besides questions as to the rights of common over it. The first question is one of boundary (a question which can be settled hereafter under the inclosure proceedings), whether the Heath is in the parish of Barrowden or in the parish of South Luffenham. If in the parish of Barrowden, it is not disputed that the ownership of the soil is in the lord of the manor of Barrowden, and the Heath should be dealt with and allotted in the Barrowden inclosure, and any rights of common over it claimed by the South Luffenham people could be dealt with in the Barrowden inclosure; but if the Heath is in the parish of South Luffenham (though it should then be dealt with and allotted in the South Luffenham inclosure, and any rights of common over it claimed by Barrowden people would be dealt with in the South Luffenham inclosure), dispute was raised as to ownership of soil, Lord Aveland claiming it as lord of the manor of South Luffenham, and Lord Exeter claiming it as lord of the hundred of Wrangdyke and manor of Barrowden, denying that there is any legal manor of South Luffenham at all; a dispute more particularly referred to in my report on the proposed South Luffenham inclosure. The disputants are willing to agree to the proportion of the Heath to be allotted to the owner of the soil, whoever he may be, and so it seemed to be a case in which it would be desirable to frame the Provisional Order in general language, setting out the proportion of allotment of the Heath to the owner of the soil without name; the Provisional Order might describe the lands proposed to be inclosed in Barrowden Open Fields land, cow pasture, and commons, and the land called the Heath, or so much thereof as is within the parish of Barrowden.

2. The land lies together, except roads here and there running through it, but portions of it are open field lands, namely, Scapwell Field, Stone Field, and East Field, containing nearly 1,500 acres; these are arable lands, except that part of Scapwell Field is meadow land, and is called South Luffenham Meadow, Lamford Meadow, and East and West Meadow; it is Lammas land and occupied in parcels, and becomes commonable from the 12th August to the 6th April, the rest of the open field lands (except the Cow Pasture) is arable and owned by persons having a fixed number of acres in the fields, and the situation of which is known, these are (or were, for the cultivation is not so regular now) cultivated by the owners on the three-shift course, two crops in successive years and a dead fallow in the third; as to the fallow, it is open during the whole year for stock cattle, sheep, and

and horses, principally sheep; and as to those field lands which have been cropped, they are open after the crops are cleared, and remain open till the lands are wanted for the cultivation of the next crop. As to the turning on after the crops are cleared, and as to the fallow, the owners of land in the open fields turn on, and the owners of certain cottages or tofts without field lands turn on for a fixed or stinted number; it was said that of late years the owners of common rights had turned on what they chose, irrespective of stints, in other words, claimed an unlimited right, but such a claim could not be sustained as such. A stint was recognised by the Court Rolls of the manor. As regards the Cow Pasture, Shire Oaks, Coppice Leys, and Mole Hills, these at first were claimed by Lord Exeter as private property, founded upon some old leases, but this claim was afterwards given up. According to the evidence of what has been done within living memory, it would seem that 40 *l.* a year is collected on behalf of Lord Exeter for the right or privilege of stocking the Cow Pasture (exclusive of Shire Oaks, Coppice Leys, and Mole Hills, which contain about 98 A. 3 R. 17 P.), containing about 110 A. 3 R. 38 P.; from New May Day till 12th August, any house-dweller in the parish may turn on any number of his own stock, and the payment is so much per head according to the number. On the Cow Pasture the number of late years has been about 70 or 80, but there has been as many as 140; during those three months only cows are turned on; during the rest of the year the Cow Pasture, and during the whole year the Shire Oaks, Coppice Leys, and Mole Hills are stocked with cattle or sheep by the owners of open field lands and common rights; every third year, when the adjoining open field is fallow, the Cow Pasture is closed. It was ultimately arranged that the Shire Oaks, Coppice Leys, and Mole Hills should be treated as waste of the manor of Barrowden, the soil being vested in the lord of that manor, and that the Cow Pasture should not be dealt with as waste land, but that in the inclosure Lord Exeter should be at liberty to claim it as Lammas land, subject to rights of common over it at certain portions of the year. As regards the Heath, there is the dispute before mentioned, as to whether it is in the parish of Barrowden, or parish of South Luffenham; if within the parish of Barrowden, it is admittedly waste of the manor of Barrowden, and the soil vested in the lord of that manor, subject to rights of common all the year round; and rights of common will, in such case, be also claimed over it by the South Luffenham people, if in the parish of South Luffenham, rights of common will still be claimed over it in that inclosure by Barrowden people, but will probably be resisted as merely rights of common of vicinage. On the Mole Hills, which is connected with the Heath by Conygar-lane, it was said that Luffenham people claimed rights of common, but which will no doubt be resisted.

2. The land lies together, as aforesaid.

3. The tracts are of the following kinds, and acreage; the Cow Pasture (pasture) 110 A. 3 R. 38 P.; Scapwell Field proper (arable except a small portion meadow), 394 A. 3 R. 25 P.; South Luffenham Meadow, also known as part of Scapwell Field (pasture), 88 A. 0 R. 29 P.; Lamford Meadow, also known as part of Scapwell Field (meadow or pasture), 43 A. 1 R. 2 P.; East Meadow, also known as part of Scapwell Field (meadow or pasture), 31 A. 3 R. 3 P.; West Meadow, also known as part of Scapwell Field, 19 A. 2 R. 35 P.; Stone Field (arable), 428 A. 0 R. 15 P.; East Field (arable), 417 A. 2 R. 36 P.; Coppice Leys, Mole Hills, and Shire Oaks (uncultivated grass land), 98 A. 3 R. 17 P.; The Heath (uncultivated grass land), 291 A. 3 R. 32 P.

4. The soil is, part of it, light loam and part of it clay, in about equal quantities.

5. No part of the land abuts upon the shore of the sea, or of a tidal navigable river.

6. There are no minerals, so far as is known; if there be minerals, the ownership of them is not separate from ownership of soil.

7. The Crown is not interested in any part of the land.

8, 9, 10. The lands proposed to be inclosed are open field lands (including the Cow Pasture as Lammas land), Shire Oaks, Coppice Leys, and Mole Hills, and the Heath. The open field lands and Cow Pasture are not waste of a manor; the Shire Oaks, Coppice Lees and Mole Hills are waste of the manor of Barrowden, of which Lord Exeter is lord; and as regards the Heath, there is the dispute whether it be in the parish of Barrowden or of South Luffenham; if it be in the parish of Barrowden it is not then disputed that it is waste of the manor of Barrowden; but according to present information it does not seem that the tenants of any manor, *qua* tenants, have rights, and that each right is subject to proof. The Coppice Leys, Shire Oaks, and Mole Hills, and also the Heath, if in the parish of Barrowden, are subject to rights of common which may be exercised at all times of the year for cattle, levant and couhcant, upon other land, and also for a limited number of cattle of the owners of certain commonable messuages. The open field lands are cultivated by the owners, and after the crops are gathered are stocked by the owners of land in the open fields, and by the owners of certain commonable messuages to which stints are attached. The Cow Pasture Lammas land is laid from New May Day to the 12th August, when it is opened and is stocked by the owners of open field lands and common right owners; the persons having rights of common claim the right of cutting gorse and heath from the Shire Oaks, Coppice Leys, Mole Hills, and the Heath.

11. No part of the Common is situate within the metropolitan police district.

12 and 13. The Common is within six miles of Stamford, having, within the Parliamentary

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borough, 8,086 inhabitants, and within the municipal borough, 7,846; and the Common is distant from Uppingham about five miles, having in the town 2464 inhabitants, and within the parish 2,601 inhabitants.

14. The number of inhabitants of the parish of Barrowden is 636.

15. The occupation of the inhabitants is agricultural; there was, till lately, a manufactory of rugs and parchment employing from about 25 to 40 hands, but that has stopped, though it may perhaps be opened again, but this is uncertain.

16. There is a village green in the centre of the village, divided by roads, and with a pond in it containing between two and three acres, and it is desirable to put the green in order, and to vest it in the churchwardens and overseers of the parish for the purposes of recreation; there is also another small green of about half an acre at the east end of the village, which it is desirable should be also vested in the churchwardens and overseers in a similar manner.

17. The Common is not usually resorted to by the inhabitants of the neighbourhood for the purpose of recreation, but cricket has been occasionally played on the Heath.

18. As regards recreation ground, the Coppice Leys, Shire Oaks, Mole Hills, and the Heath are not so convenient as would be a part of the open fields, and it is proposed that an allotment of four acres in the open fields (in the East Field) at a point conveniently situated near the village, and marked upon the sketch hereto annexed with the letter A, should be set out for recreation; the population of the parish is 636.

19 and 20. The number of cottages in the parish is about 100, and about 20 of them have common rights; the large majority of cottages have little or no gardens. The Coppice Leys, Shire Oaks, Mole Hills, and the Heath, are not convenient for gardens, but it is proposed that 15 acres in the open fields (the East Field) be set out in a good situation near the village and adjoining the recreation ground, the land being suitable for gardens, and the position is marked upon the sketch hereto annexed with the letter B. There are 37 allotment gardens of half a rood each, let to the poor partly by the Marquis of Exeter and partly by the Rector of Barrowden, and they are all occupied; these last-mentioned allotments are in the open fields, but they are not so good a situation as the land proposed to be set out, nor is the land so good for gardens. On the occasion of the application for inclosure in 1871, a petition to the Marquis of Exeter by several inhabitants of the parish of Barrowden for garden ground to be set out, was handed in, and is on the file of papers.

21. (1) No free access is required to be secured to any particular points of view.

(2) There are no particular trees or objects of historical interest to be preserved.

(3) Recreation ground is proposed to be set out, and it is not necessary to reserve any particular privilege of playing games.

(4) It is intended that necessary and convenient roads should be set out in the inclosure.

(5) There is no other specified thing to be done which might be thought equitable and expedient, regard being had to the benefit of the neighbourhood.

22. As regards allotment in lieu of soil, it was agreed that one-sixteenth of the lands called the Shire Oaks, the Coppice Leys, and the Mole Hills, be allotted to the lord of the hundred of Wrangdyke and manor of Barrowden (Lord Exeter), in lieu of right of soil, such allotment to include compensation for minerals, but to be without prejudice to any allotment to which he may be entitled in respect of any right of common of pasturage. As regards the Heath, there is the dispute before mentioned, whether it be in the parish of Barrowden or South Luffenham; if it be in the parish of Barrowden, it would not be disputed that the soil is in the lord of the manor of Barrowden, but if it be in the parish of South Luffenham, there is the further dispute whether the ownership of the soil is vested in the lord of the manor of South Luffenham (if there be a legal manor), or in the lord of the hundred of Wrangdyke and manor of Barrowden. The disputants as to ownership of soil (namely the Marquis of Exeter, the lord of the hundred of Wrangdyke and manor of Barrowden, and Lord Aveland, the lord of the manor of South Luffenham, if there be such a manor) consent that one-sixteenth of the Heath, or of so much thereof as is in the parish of Barrowden be set out to the owner of the soil without name, such allotment to include compensation for minerals, but to be without prejudice to any allotment to which he may be entitled in respect of any right of common of pasturage. A draft of the Provisional Order might be submitted to Mr. Thompson, on behalf of Lord Exeter, and to Mr. Travers Smith, on behalf of Lord Aveland, before the Order is formally issued.

23, 24, 25, 26. There are about 35 persons interested, and of these, 14 have signed the application; the open field lands and old inclosed lands are rated together, but the old inclosed lands form only a small portion of the parish, and the rateable value may be taken as sufficiently accurate. The total rateable value, exclusive of tithes, is 2,433*l.* 19*s.* 4*d.*; one-third of this sum is 811*l.*, and two-thirds are 1,622*l.*; the rateable value of land belonging to assenting owners who have signed is 2,032*l.*, much more than not only one-third but two-thirds of the whole value, and further assets could be obtained if deemed desirable. No one has dissented from the application, though three declined to sign owning land of the rateable value of 126*l* 9*s* 3*d.*

27. There

27. There is no litigation, dispute, or question as to the boundaries of the land or minerals, except the question as to the Heath hereinbefore stated.

28. It is anticipated that exchanges will be made.

29 and 30. As regards the advantages anticipated from the inclosure of the Common, as opposed to regulation, and the reason why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood and to private interests, information to the following effect was furnished; that at present the open field lands are owned in small strips spread about and in disconnected situations, the number of strips being 2,790, giving an average of less than an acre per strip (about two-thirds of an acre); that this prevents the proper cultivation of the land, and is also productive of disputes as to boundaries, and as to manner of cultivation; that, in its present state, the land cannot be properly farmed, and the owners will not lay out capital in improving or draining the land, nor, indeed, sufficient to cultivate it so as to get out of it the produce which under proper farming could be got; that it cannot be properly sheep-farmed in its present state, and so a profitable mode of farming is obstructed; that, if inclosed, there is no doubt capital would be laid out upon the land, and its productiveness increased, and the rateable value increased; that at present in some cases it is scarcely cultivated at all, and that there is great difficulty in letting it, and some part is unlet; that it is estimated the land would be increased one-third in value if inclosed; that, as regards the Heath and the other wastes, if inclosed, they would most probably be ploughed and cultivated as arable land, and the value more than doubled, and that, indeed, they are of little value at present, and that mere regulation would be of little or no use; that, if these were inclosed, there would be considerable increase in the employment of labour both in more regular and fuller employment being given to the present labourers, and in other labourers being brought into the parish, and that a better tone and character would be given to the parish; and that, in case of inclosure, a most suitable recreation ground would be set out in addition to the village greens, and also allotment for field gardens for the labouring poor would be set out in the most convenient situation, and of suitable land, and that such allotments would be of direct benefit to the neighbourhood; that there is but little stock in the parish, but inclosure would lessen the chance of infectious diseases; that for some years the land would all probably be, or be turned into, arable, though perhaps after some years some of the land might be laid down in grass; that regulation would be of little or no use in this case, and money would not be laid out if there were only regulation, and, indeed, the lord of the manor and all parties were unanimous in favour of inclosure, and did not wish for and would not be at any expense for regulation only.

31. There was a previous application in 1871, and meetings held thereon, but the matter, like many others, stood over till the New Commons Act was passed.

32. The Exeter Arms Inn is a convenient place in the parish for holding meetings.

33. Luffenham Railway Station is about two miles distant; there will be another station, the Wakerley Station, on the Seaton and Wansford Railway, now making, about a mile off.

34. The places for affixing notices are the church door, the Baptist chapel, and the post office.

35. Proof of service of notice of the application was given on Mr. Atter, the town clerk of the borough of Stamford, the corporation of the borough being the sanitary authority; and Mr. Atter, who was present, admitted the service, and he said that the matter was formally brought before the corporation and he had no instructions in the matter; he also said that under a recent inclosure, recreation ground had been set out for Stamford.

I inspected the land proposed to be inclosed, and annex a sketch thereof hereto.

I report in favour of the expediency of the inclosure; regarded both in relation to the benefit of the neighbourhood and to private interests, the greater part of the land to be inclosed is open field land owned by several owners in strips, so many as 2,790, several strips being owned by the same persons, but spread about and in disconnected positions, and the average per slip being only about two-thirds of an acre; and this quite prevents due cultivation of the land, which is consequently badly farmed, and much less produce is obtained than the land is capable of producing; and it is also a source of dispute, both as regards the boundaries of strips and the manner of cultivation, and public and private interests both suffer; and as regards the waste lands, they are of but little value at present, and are but little used for recreation, but are capable of great improvement; if there were inclosure, money would be laid out upon the land, which would then be duly cultivated and give increased produce; and there would be increased employment of labour, and increased value of land for rateable and other purposes; and better roads would be made, and the tone and character of the parish would be improved, and its advantages developed; and there would be a direct and special gain to the neighbourhood in public allotments for recreation and for field gardens for the labouring poor, being set out in situations both convenient and suitable.

The file of papers is returned herewith.

I have, &c.

The Inclosure Commissioners for England and Wales.

(signed) *Charles Wood.*

Appendix, No. 2.

— 3. —

Provisional Order for the Inclosure of a Common.

Whereas persons interested in certain lands called or known as The Open Field Land, Cow Pasture, and Commons, situate in the parish of Barrowden, and the Heath, or so much thereof as is within the said parish in the county of Rutland, such lands being a common within the meaning of "The Inclosure Acts, 1845 to 1876," have made application to the Inclosure Commissioners for England and Wales to issue a Provisional Order for the inclosure of such common, and to certify that it is expedient that such Provisional Order should be confirmed by Parliament.

And whereas it has been made to appear to the said Commissioners that the persons making the said application represent at least one-third in value of such interests in the said common as are proposed to be affected by the Provisional Order:

And whereas the said Commissioners, having taken the said application into consideration, were satisfied that a *primâ facie* case had been made out, and that, regard being had to the benefit of the neighbourhood as well as to private interests, it was expedient to proceed further in the matter, and accordingly ordered a local inquiry to be held by an Assistant Inclosure Commissioner:

And whereas the said Assistant Commissioner having inspected the said Common, and having caused public notice to be given as required by the said Acts, held, pursuant to the said notice, public meetings on the 5th day of April 1877, at 11 o'clock in the forenoon, and at seven o'clock in the evening, at the Exeter Arms Inn in the said parish, to hear all persons desirous of being heard on the subject matter of the said application, and any information or evidence which might be offered in relation thereto, and inquired into the correctness of the statements in the said application, and otherwise into the expediency of making the Provisional Order applied for, and into the nature of the provisions to be inserted in such Provisional Order:

And whereas the said Assistant Commissioner duly reported in writing to the said Commissioners the result of the local inquiry and of the public meetings held by him, together with the information obtained by him as to the several particulars in the said application, and all other information required by the said Acts, and annexed to his Report a map of the said common, a copy of which map is hereto annexed.

And whereas the Most Honourable William Alleyne, Marquis of Exeter, as lord of the hundred of Wrangdyke and manor of Barrowden, is entitled to the soil of the lands called The Shire Oaks, The Coppice Leys, and The Mole Hills, and of the Heath, or so much thereof as is within the said parish:

Now, therefore, in pursuance of the powers given to us by the said Acts, We, the Inclosure Commissioners for England and Wales, being satisfied that, having regard to the benefit of the neighbourhood as well as to private interests, the inclosure of the said Common is desirable, have framed for the consideration of the persons interested this our Draft Provisional Order, specifying the terms and conditions on which, provided the necessary consents are given thereto, We are prepared to certify that it is expedient the Provisional Order should be confirmed by Parliament; that is to say:—

That the village green in the centre of the village, and the small green at the east end of the village containing together about 3 acres, and also 4 acres in East Field at or near the spot marked A on the map hereto annexed, be allotted for recreation ground.

That 20 acres in East Field, at or near the spot marked B on the said map, be allotted for field gardens.

That carriage-roads, bridle-roads, and footpaths be set out to the satisfaction of the Inclosure Commissioners as may be found necessary and convenient.

That one-sixteenth part in value of the said lands called The Shire Oaks, The Coppice Leys, and the Mole Hills, and of the Heath, or so much thereof as is within the said parish of Barrowden, be allotted under the provisions of the said Acts to the said William Alleyne, Marquis of Exeter, as lord of the said manor, in lieu of his right and interest in the soil of the said lands, inclusively of his right and interest in all mines, minerals, stone, and other substrata under the same, but exclusively of any right of pasturage or other right of common or interest in the nature of a right of common which may have been usually enjoyed by such lord or his tenants upon the said lands, which said right of pasturage or other right, if any, is to be compensated by allotments or otherwise independently of the allotment hereby stipulated in respect of his right and interest in the soil.

In witness whereof, We have hereunto set our official seal this Twenty-sixth day of April One thousand Eight hundred and Seventy-seven.

L.S.

— 4. —

CONSENTS.

We, the undersigned, being persons interested in certain lands called or known as the Open Field Land, Cow Pasture, aad Commons, situate in the parish of Barrowden, and the Heath, or so much thereof as is within the said parish, in the county of Rutland, whose interests will be affected by the draft Provisional Order for the inclosure of the said lands, framed by the Inclosure Commissioners for England and Wales, and dated the 26th day of April, in the year of our Lord 1877, do hereby signify our consent to such draft Provisional Order.

Witness our hands,

(signed) *Henry Mason,* } Churchwardens of the
James Eady, } Parish of Barrowden.
Elizabeth Shelton.
Daniel Richmond.
W. Whitmee.
R. Shelton.
J. B. Pepper.

Witness to the signatures of Henry Mason, James Eady, Elizabeth Shelton, Daniel Richmond, William Whitmee, Robert Shelton, and John Barron Pepper.

J. G. Desborough,
Clerk to Messrs. Thompson & Co.,
Solicitors,
Stamford.

(signed) *Exeter.*

Witness to the signature of William Alleyne Marquis of Exeter,

R. P. Thompson,
Captain, Northumberland and Rutland Militia.

(signed) *Joseph Phillips.*
W. E. Robbs.
Charles James Dyer.
Henry Mason.
E. Cliff.
Thomas Swift.
Thomas Wood.
John Taylor.
Thomas Swann.
Elizabeth Tipping.

Witness to the signature of Joseph Phillips, William Edward Robbs, Charles James Dyer, Henry Mason, Edward Cliff, Thomas Swift, Thomas Wood, John Taylor Thomas Swann, and Elizabeth Tipping.

J. G. Desborough,
Clerk to Messrs. Thompson & Co.,
Solicitors,
Stamford.

COUNTY OF RUTLAND.

INCLOSURE COMMISSION.

SOUTH LUFFENHAM INCLOSURE.

— 1. —

APPLICATION to the Inclosure Commissioners for England and Wales for a Provisional Order for the Inclosure of a Common under the Provisions of "The Inclosure Acts, 1845 to 1876."

THE land to which this application relates is situated in the parish of South Luffenham, in the county of Rutland, and is commonly known as South Luffenham Heath, and South Luffenham Open Fields.

We, the undersigned, being persons representing at least one-third in value of such interests in the land above mentioned as are to be affected, propose the inclosure of such land, under "The Inclosure Acts, 1845 to 1876," and submit to the Inclosure Commissioners for England and Wales the information in respect to such land, and to the proposed inclosure, required by the questions hereunto annexed, believing such information to be correct: And we hereby apply to the Commissioners, if satisfied that it is desirable, to issue a Provisional Order, and to certify that it is expedient that such Provisional Order should be confirmed by Parliament.

(signed)

Aveland.
Exeter.
Ed. N. Conant.
John Rose.
Hay S. Escott, Rector.

William Wood, } Churchwardens.
George Tailby, }
James Pridmore.
William Pepper.
William Daniel Rice.
J. Morris.

INFORMATION to be furnished to the Inclosure Commissioners respecting the Common to which the foregoing Application relates.

1. WHAT is the extent in statute acres of the land proposed to be inclosed, and from what source was the area obtained ?	About 1,060 acres.
2. Does the land lie together? If in separate tracts, what is the acreable extent of each?	Yes, it all lies together.
3. Is the land proposed to be inclosed waste and uncultivated land, arable, meadow, pasture, or woodland? If of different kinds, what is the acreable extent of each ?	Arable, about 737 acres, and uncultivate pasture, about 323 acres.
4. What is the nature of the soil?	Various, but not generally of very goo quality.
5. Does any part of the land abut upon the shore of the sea, or of a tidal navigable river?	No.
6. Are	Non

6. Are there any open mines, or any minerals, or valuable strata, now in course of being worked, or known to have been formerly worked, or known or supposed to exist in or under the land? If so, what is the nature of these mines, minerals, or valuable strata, and the extent of the workings, if any; and is the property of these mines, minerals, and valuable strata separate from the ownership of the soil or otherwise, and are they worked by the owners or by lessees?	None.
7. Is the Crown interested in any part of the land?	No.
8. Is all or any, and if any, what part, of the land proposed to be inclosed, waste land of a manor, on which the tenants of such manor have rights of common? If so, give the name of the manor and of the lord.	The heath containing about 290 acres, is stocked by the inhabitants of South Luffenham and Barrowden, but disputes exist as to the proportion of the heath, which either parish has a right to stock, and the stint thereon.
9. Is all or any, and if any, what part, of the land proposed to be inclosed, subject to rights of common which may be exercised at all times of the year for cattle levant and couchant upon other land, or to any rights of common which may be exercised at all times of every year, and which are not limited by numbers or stints?	Yes, the heath.
10. Is the land proposed to be inclosed, or any and what part of it, subject to any and what rights of common not mentioned in Questions 8 and 9, or is all or any, and what part of it, gated or stinted pasture, or what are the rights affecting such land, or the several tracts, if more than one, which are supposed to make it subject to be inclosed under the Inclosure Acts, 1845 to 1876?	The tenants of the arable land alone have rights of common over the arable land.
11. Is the common or any part thereof situate within the Metropolitan Police District?	No.
12. Is the common a suburban common; that is to say, is it situate either wholly or partly, in any town or towns, or within six miles of any town or towns?	Stamford (8,344 population).
13. State the distance of the common from any neighbouring towns or villages, and the population of such towns or villages?	About half way between South Luffenham and Barrowden; about half a mile from each.
14. What is the number of the inhabitants of the *parish, township, or place, or several parishes, townships, or places,* in which the land proposed to be inclosed is situated, according to the last Parliamentary census?	359 inhabitants of South Luffenham at last census.
15. What are the chief occupations of the inhabitants; agricultural, manufacturing, or otherwise; and what kinds of manufactures, if any, are chiefly carried on?	Entirely agricultural.
16. Is there any town green or village green in the parish or place within which the land proposed to be inclosed is situated, or any ground other than the common available for the recreation of the neighbourhood? If so, give particulars as to area, situation, and character, and to what extent it is used by the public for recreation.	None.
17. Do the inhabitants of the neighbourhood resort to the common for purposes of recreation? And is any particular part used for playing games?	Very little, and no regular or systematic games played there.

App., No. 2

18. Is it proposed that any, and if any, what allotment should be made for recreation ground? Is the land proposed to be so allotted conveniently situated, and otherwise suitable for the purpose?	Notably none is required in the present case. If any, the quantity would be left to the Commissioner.
19. State the number of cottages in the neighbourhood, and whether or not they have gardens attached. Give information as to the average size of such gardens, and as to any other land now available for gardens for the poor inhabitants.	About 75 cottages; some have garden allotments of about 20 poles each, near the village; there are also some of a smaller size, and not so conveniently situated. Very few of the cottages have gardens attached.
20. Is it proposed that any, and if any, what allotment should be made for field gardens? Is the land proposed to be so allotted conveniently situated, and suitable for the purposes of cultivation as gardens?	Yes. It is proposed to leave the quantity to the Commissioners.
21. Do the applicants suggest that, for the benefit of the neighbourhood, any of the following terms and conditions which may be applicable, should be inserted in the Provisional Order?	
(1.) That free access be secured to any particular points in view;	
(2.) That particular tree or objects of historical interest be preserved;	
(3.) That there be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation at such times, and in such manner, and on such parts of the common, as may be thought suitable;	
(4.) That carriage roads, briddle-paths, and footpaths over the common be set out in such directions as may appear most commodious;	This should be provided for.
(5.) That any other specified thing be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.	
22. If the lord of the manor is entitled to the soil, what allotment has been agreed or is proposed to be made to him in respect of his right and interest, and is the allotment proposed to include a compensation for his interest in all or any of the mines, minerals, and sub-strata?	No special agreement has been made at present, and it is proposed to leave the question of the value of the manorial rights to the Commissioner.
23. What is the number, so far as can be ascertained, of the parties interested as owners of the soil, common rights, or otherwise, in the land proposed to be inclosed? How many of the persons so interested have assented to this application?	22 owners of the soil. Ten of the largest owners have assented by signing this application.
24. What proportion does the value of the interest of the assenting parties bear to the whole value of the interests in the land proposed to be inclosed?	Upwards of four-fifths in value have signed this application.
25. How many of the parties interested have dissented from the application, and what is the proportion of their interests to the whole value of the interests in the land?	None that we are aware of.
26. How have the values of interests been ascertained; by the assessment to the poor rate, by number of stints, or how otherwise?	Poor rate.

27. Is

See

27. Is there any litigation, dispute, or question as to the boundaries of the land proposed to be inclosed, or the mines, minerals, or strata in or under it? If so, between whom has it arisen?	*See* Question No. 8 as to boundaries.	App., No. 2.
28. Would any exchanges with owners of land not subject to be inclosed be desirable?	Possibly for allotment gardens.	
29. State particularly the advantages anticipated from the inclosure of the common as opposed to its regulation; and also the reasons why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood.	In increased productiveness, increased employment of labour, and greatly increased value. The arable lands, being now in so many small pieces cannot be so profitably cultivated as they will be when inclosed.	
30. What advantages do the applicants anticipate from the inclosure in relation to private interests?	As above stated.	
31. Has any previous application for the inclosure or regulation of the lands referred to in this application been made? If so, give the date of such application.	Yes. The proposal was sent in on the 16th of January 1871.	
32. Name an inn or other convenient place in the parish for holding meetings.	One meeting for North and South Luffenham at the "Fox and Hounds Inn," at North Luffenham, as on previous application will probably be sufficient. *See* accompanying application as to North Luffenham.	
33. What is the railway station nearest to the common and to the proposed place for holding meetings, and what is the distance of such railway station?	Luffenham Station, in the centre of the lands in question.	
34. Name the places on which it will be necessary to affix notices of public meetings to be held by the Assistant Commissioner, in order to comply with the direction in the 11th section of the Commons Act, 1876, that copies shall be posted on the church door, on or near the common, at the post office or post offices; at any town hall, or vestry hall, or other building or room, the expense of maintaining which is payable out of any local rate, and at all places in the parish or district where notices are usually posted.	The church door, and at the post office in the village.	
35. The application must be accompanied by a map on tracing cloth, clearly defining the lands proposed to be inclosed; and by copies of the newspapers containing the advertisement of the intended application; and also, in the case of a suburban common, by proof of service of notice on the urban sanitary authority or authorities.	Map, newspapers, and notices accompanying application.	

Appendix, No. 2.

— 2. —

ASSISTANT COMMISSIONER'S REPORT on Local Inquiry Meetings as to Proposed Inclosure.

Gentlemen, April 1877.

I HAVE the honour to report that on the 6th day of April 1877, I held a public meeting at 10.30 o'clock in the forenoon, at the Fox and Hounds Inn, North Luffenham, in the county of Rutland, and a second public meeting at the same place at the hour of 7 in the evening of the same day, for the purpose of hearing all persons desirous of being heard on the subject matter of an application for a Provisional Order for the inclosure of South Luffenham Heath and South Luffenham Open Fields, in the parish of South Luffenham, in the said county of Rutland, whether regarded in relation to the benefit of the neighbourhood or to private interests, and for receiving any information or evidence which might be offered in relation thereto.

It was proved that notice of the meetings was fixed on the principal outer door of the parish church of South Luffenham, and on the wall of the post office, near where letters are posted, on the 14th day of March last. There are no other places usual in the parish for posting notices. The church and post office are near the open fields; the heath is nearly a mile off, but notices would be more seen at the above places than on the heath.

There were present at the morning meeting, Mr. James Flux, from the office of Mr. Travers Smith, London, solicitor for, and holding power of attorney from, Lord Aveland, Lord of the Manor of South Luffenham; Mr. Atter, solicitor, Stamford, Steward of the Manor of South Luffenham, and for Mrs. Cooper, freeholder; Mr. Thomas Sturgess, Estate Agent for Lord Aveland; Mr. Richardson Thompson, of Stamford, solicitor for, and holding power of attorney from, the Marquis of Exeter, Lord of the Hundred of Wrangdyke and Manor of Barrowden, and freeholder in South Luffenham; the Rev. Philip Dennis, Rector of North Luffenham; Mr. Shield, of Uppingham, solicitor for Mr. E. N. Conant, freeholder in South and North Luffenham, and for Mr. and Mrs. Rowley, freeholders in South Luffenham, and for Mr. H. Baines, freeholder in South Luffenham, and for Mr. William Daniel Rice, freeholder in North and South Luffenham, and for Mr. William Pepper, freeholder in South Luffenham, Mr. Pepper being himself also present; Mr. John Dickens Mason, freeholder in North Luffenham; Mr. Henry Bollams, bootmaker, freeholder in South and North Luffenham; Mr. John Rose, timber merchant, freeholder in North and South Luffenham; Mr. R. N. Swingler, farmer, freeholder in South Luffenham; Mr. Robert Tomlinson, overseer of the poor for South Luffenham, and rate collector for North Luffenham, and tithe collector for both parishes.

At the evening meeting there were present, Mr. Flux, Mr. Thompson, Mr. Shield, Mr. Atter, Mr. Sturgess, Mr. Rose, all of whom were present at the morning meeting, and also Mr. Robert Bowder, of Castle Bytham, baker and grocer, owner of houses in South Luffenham, and Mr. Joseph Freeman, of Morcott, limeburner, freeholder, for both of whom Mr. Atter appeared.

1. The land proposed to be inclosed contains about 1,074 acres, estimated from the tithe apportionment, and is commonly known as South Luffenham Open Fields, in the parish of South Luffenham, and South Luffenham Heath, but as regards the heath, there is a dispute between the parishes of South Luffenham and Barrowden as to whether it is in the parish of South Luffenham or in the parish of Barrowden, except as to a small portion of the heath, called Flasken, or Plasket Leys, and which it is admitted is in the parish of South Luffenham; there is a contemporaneous proposed inclosure of land in Barrowden, and the heath, except Flasket Leys, is also included in that application. There are two questions in dispute with reference to the heath, besides questions as to rights of common over it; the first question is one of boundary (a question which can be settled hereafter under the inclosure proceedings), whether the heath is in the parish of Barrowden, or in the parish of South Luffenham; if in the parish of Barrowden, it is not disputed that the ownership of soil is in the lord of the manor of Barrowden, and the matter should be dealt with and allotted in the Barrowden Inclosure, but if the heath is in the parish of South Luffenham (though it should then be dealt with and allotted in the South Luffenham Inclosure, and any rights of common over it claimed by Barrowden people would be dealt with in the South Luffenham Inclosure), yet dispute was raised as to the ownership of soil, Lord Aveland claiming it as lord of the manor of South Luffenham, and Lord Exeter claiming it as lord of the hundred of Wrangdyke and manor of Barrowden, denying that there is any legal manor of South Luffenham at all, and contending that there is only a pretended or reputed manor of modern date, and commencing at a time when manors could not be created, and that this can be shown from the court rolls of the hundred of Wrangdyke and manor of Barrowden. The question as to the manor of South Luffenham and ownership of soil of the heath, if within the parish of South Luffenham, was partly inquired into before me at Lincoln's Inn, in the year 1871, and it was desired that what then took place might be deemed as repeated before me on the present occasion. On the part of Lord Aveland (represented

presented by Mr. Travers Smith) documentary evidence was adduced, showing a conveyance of the manor of South Luffenham from the Digby family to the Aveland (Heathcote) family in 1763, and several copies of court rolls of the manor of South Luffenham, ranging from 1800 to 1856, were produced, also an abstract made in 1753 containing an abstract of a deed, dated 1611, in which the manor of South Luffenham is referred to, and also containing an abstract of a deed, dated in 1652, being a settlement of the manor of South Luffenham, the original deed itself being also produced, and a Master's Report in Chancery, dated 1715, in a suit of Digby *v.* Markworth, referring to the said settlement of 1652, of the manor of South Luffenham; a decision of the Inclosure Commissioners in the Pilton Inclosure upon the claims of Lord Exeter and Sir Gilbert Heathcote was also put in on the part of Lord Aveland, but the Commissioners decided that there was no waste, and so claim to the soil of the waste fell to the ground. On the part of Lord Exeter (represented by Mr. Thompson), it was contended that the manor of South Luffenham was not a legal manor, but only a pretended or reputed manor, and that the wastes of South Luffenham were wastes of the hundred of Wrangdyke, and manor of Barrowden, and that the soil thereof was vested in the lord of such hundred and manor, and the court rolls of the said hundred and manor were produced to show that the landowners of South Luffenham had attended the courts of the hundred of Wrangdyke and manor of Barrowden, and had done fealty or had their fealty respited, and showing other entries relating to landowners or inhabitants of South Luffenham; a translation of the grant from the Crown (5 Edward VI., 1551) of the manor of Barrowden was produced, in which the description was, "Manor of Barrowden otherwise Wrangdyke." The case was not tried out, and the evidence was not fully heard, for the disputants being willing to agree to the proportion of the heath to be allotted to the owner of the soil whoever he may be, it seemed to be a case in which it would be desirable to frame the Provisional Order, in general language setting out the proportion of allotment of the heath to the owner of the soil without name, leaving the parties to put in such claims in the inclosure as to ownership of soil as they may be advised, or if, on the trial of such claims it should be decided that the matter should be left open, the case could be afterwards tried at law upon the right to the allotment. It was argued, on the part of Lord Aveland, that having shown a good conveyancing title to the manor of South Luffenham, he is entitled as the lord of such manor to the soil of the wastes of the manor, and that, even if the manor of South Luffenham be an inferior manor within the superior manor or lordship of Wrangdyke and Barrowden, still the ownership of the soil of waste lands within the inferior manor is in the lord of the inferior manor and not in the lord of the superior manor unless the soil was expressly reserved; and also that there is no proof of South Luffenham being within the manor of Barrowden, and that, even if it be within the hundred of Wrangdyke (which is not admitted), the being within the hundred cannot affect the question of soil. On the part of Lord Exeter it was argued that the entries on the court rolls of the hundred of Wrangdyke and manor of Barrowden show that the landowners of South Luffenham, up to 1763, attended the courts, were appointed officers, did fealty and had fealty respited, and were subject to the jurisdiction of the courts of the said hundred and manor, and that in the grant from the Crown the manor is described as "Manor of Barrowden otherwise Wrangdyke," and that either the manor of South Luffenham is not a legal manor, or that the evidence will be found to establish that there was a reservation of ownership of soil by the superior lord on granting out the inferior manor. Since the year 1763 the landowners or inhabitants of South Luffenham have not been summoned to nor have attended the courts of the hundred of Wrangdyke and manor of Barrowden. I refrain at present from giving any opinion, indeed the case was not tried out, the disputants being willing to consent to a Provisional Order in general terms, and to the proportion of allotment. The Provisional Order may describe the lands proposed to be inclosed as South Luffenham Open Fields, and the land called the Heath, including Flasket or Plasket Leys, or of so much thereof as is in the parish of South Luffenham; and after reciting that a difference is pending as to the ownership of the soil of the heath, or of so much of the heath as is in the parish of South Luffenham, should direct one-sixteenth (the proportion agreed upon) of the heath, or of so much thereof as is in the parish of South Luffenham, to be set out to the owner of the soil without mentioning name, such allotment to include compensation for his interest in mines, minerals, and sub-strata, but to be without prejudice to any allotment to which he may be entitled in respect of any right of common or pasturage.

At the meeting on the 6th instant Mr. Thompson, on behalf of Lord Exeter, put in certain books endorsed Barrowden and South Luffenham, Morcott, and Wrangdyke Chief Rents, and Manton. Also the Head Silver in Wrangdyke Hundred for 1778, and subsequently down to 1847, being 70 books altogether, and also 10 books labelled Hundred of Wrangdyke, 1852 to 1863, the above to be deemed to be put in at such meeting as regards time, but subject to any objection as to whether legal evidence or of what weight.

2 and 3. There are two tracts: the West Field lies a little distance off; the South Field, Luffenham Heath (in dispute), East Field, and Flasket Leys (part of Luffenham Heath) join together; the West Field, South Field, and East Field are open field lands, and contain about 755 *a.* 21 *p.*; the heath contains about 291 *a.* 3 *r.* 32 *p.* exclusive of Flasket Leys, which contains about 27 *a.* 2 *r.* 29 *p.* The heath, including Flasket Leys and some strips in the open fields, are pasture land, and the remainder of the land is arable.

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4. The soil is principally light loamy soil, but some part of it towards Barrowden is strong clay soil, and wet.

5. No part of the land abuts upon the shore of the sea or of a tidal navigable river.

6. There are no mines being worked, and no minerals are supposed to exist, except there is some stone and limestone and sand; the ownership of minerals and sub-strata is not separate from ownership of soil.

7. The Crown is not interested in any part of the land.

8, 9, and 10. The lands proposed to be inclosed are open field lands and the heath, including Flasket Leys; the open field lands are not waste of any manor. As regards the heath, there are disputes, as before mentioned, first, whether it is within the parish of Barrowden or South Luffenham, and if within the latter whether it is waste of the manor of South Luffenham, if there be such a manor, or whether it is waste of the hundred of Wrangdyke and manor of Barrowden, but according to present information, it does not seem that tenants of any manor *quâ* tenants have right, but that each right is subject to proof. As regards the open field lands, they are owned by certain persons in known acres, and are cultivated according to the three shift course, one being part fallow and part seed every third year. After the crops are gathered, the owners of the open fields and of the old inclosed lands turn on sheep. As regards the heath, including Flasket Leys, the owners of the open field lands and of old inclosed lands turn on all the year round. It was said that the owners of houses without lands had the privilege of turning on, but it was not known that they had done so of late years.

11. No part of the common is situate within the Metropolitan Police District.

12 and 13. The common is situate within six miles of Stamford, having a population within the Parliamentary borough of 8,086, and within the municipal borough of 7,846; the common is distant about five miles from Uppingham, the parish of which has a population of 2,601, and the town of 2,464. The common is about half way between South Luffenham and Barrowden, about a mile from each.

14. The population of the parish of South Luffenham is 359.

15. The occupation of the inhabitants is entirely agricultural.

16. There is a small piece of grass at the junction of roads, only a few poles, and can scarcely be called a village green, but it had better be vested in the churchwardens and overseers for the purposes of recreation.

17. The heath is not usually used for the purposes of recreation, but cricket is occasionally played there.

18. As regards recreation ground, the population of the parish is 359. The heath is not convenient for recreation, but it is proposed to set out four acres in the open fields near to the village and convenient, and I have marked the situation in the sketch annexed hereto as at or near the point A.

19 and 20. The number of cottages in the parish is 53, and of these about 35 to 40 have either no gardens or gardens less than 10 perches; whilst few, if any, have so large a garden as a rood. There are some allotments let for gardens by Lord Aveland or his tenants, and the rector and Mr. Conant in allotments of about 20 poles. The heath is at some distance from the village, besides there being the question whether it is in the parish of South Luffenham or Barrowden, the undisputed part of it, Flasket Leys, being at a considerable distance. Part of the open field land is much more conveniently situated, and it is proposed that an allotment of 15 acres should be set out in the open field land for field gardens for the labouring poor, and I have marked on the sketch annexed hereto the situation at the point B. adjoining the recreation allotment, and at a place which is near the village and suitable.

On the occasion of the meeting on application for inclosure in the year 1871 a petition to the Inclosure Commissioners was handed to me, and which I forwarded to them, and which is on the file of papers, asking for recreation ground and allotments for gardens for the labouring poor to be set out as convenient as possible.

21. (1.) It is not necessary for any free access to be secured to any particular points of view.

(2.) There are no particular trees or objects of historical interest to be preserved.

(3.) Recreation ground is intended to be set out, and it is not necessary to reserve any special privilege of playing games.

(4.) It is intended that necessary and convenient roads should be set out in the inclosure.

(5.) There is not any other specified thing to be done which might be thought equitable and expedient, regard being had to the benefit of the neighbourhood.

22. As regards allotment in lieu of soil, the only part which is waste of a manor is the heath, including Flasket or Plasket Leys; as regards the heath (except Flasket Leys), as before

before mentioned, there is a dispute whether it is in the parish of South Luffenham or of Barrowden; if it be in the parish of Barrowden it would not be disputed that the soil is in the lord of the manor of Barrowden; if it be in the parish of South Luffenham there is the further dispute whether the ownership of the soil is vested in the lord of the manor of South Luffenham (if there be a legal manor) or in the lord of the hundred of Wrangdyke and manor of Barrowden; this latter question also affecting Flasket Leys, which is admitted to be in the parish of South Luffenham. The disputants as to ownership of soil (namely, Lord Exeter, the lord of the hundred of Wrangdyke and manor of Barrowden, and Lord Aveland, the lord of the manor of South Luffenham, if there be such a manor) consent that one-sixteenth of the heath and Flasket Leys, or of so much thereof as is in the parish of South Luffenham, be set out to the owner of the soil without name, such allotment to include compensation for minerals, but to be without prejudice to any allotment to which he may be entitled in respect of any right of common or pasturage. A draft of the Provisional Order might be submitted to Mr. Travers Smith on behalf of Lord Aveland, and to Mr. Thompson on behalf of Lord Exeter, before the Order is formally issued.

23, 24, 25, and 26. The lands proposed to be inclosed are open field lands, and the heath including Flasket Leys; the persons interested are said to be the owners of open field lands and of old inclosed lands, and there are about 22 persons interested as such, of whom 10 have signed the application; but it is doubtful whether there may not be some rights attached to houses without lands, and if so, more persons would be interested, but if the total rateable value of the parish be taken, this is (after deducting tithes) 2,199 *l.* 12 *s.* 11 *d.*, and one-third of this sum is 733 *l.*, and two-thirds are 1,466 *l.*; the total rateable value of persons who have signed the application is 1,040 *l.* 3 *s.*, being more than one-third of the total interest, and more assents will be obtained; moreover, in taking the total rateable value of the parish there has been included the full rateable value of the London and North Western, and the Midland Railways in the parish, being a total amount of 694 *l.* 10 *s.*, from which considerable deduction ought to be made, and so with reference to inclosure; the total rateable value of the parish would be less, and the proportion of assenting interest greater, and no doubt is entertained of assents being obtained representing an interest of more than two-thirds of the whole, and no one has dissented from the application.

27. There is no litigation, dispute, or question as to the boundaries of the land or minerals, except the question as to the heath hereinbefore stated.

28. It is not anticipated that exchanges will be made.

29 and 30. As regards the advantages anticipated from the inclosure of the common as opposed to regulation, and the reasons why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood, and to private interests, information to the following effect was furnished: that at the present the open field lands are owned in small strips, spread about and in disconnected situations, the number of strips being 1,238, giving an average of a little over half an acre per slip; that this prevents the proper cultivation of the land, and is also productive of disputes as to boundaries, and as to manner of cultivation; that in its present state the land cannot be properly farmed, and the owners will not lay out capital in improving or draining the land, nor indeed sufficient to cultivate it so as to get out of it the produce which, under proper farming, could be got; that it cannot be properly sheep-farmed in its present state, and so a profitable mode of farming is obstructed; that if inclosed there is no doubt capital would be laid out upon the land, and its productiveness increased, and the rateable value increased; that it is estimated the land would be increased one-third at least in value if inclosed; that as regards the heath, if inclosed it would most probably be ploughed and cultivated as arable land, and the value more than doubled, and that indeed it is of little value at present, and that mere regulation would be of little or no use; that if there were inclosure there would be considerable increase in the employment of labour, both in more regular and fuller employment being given to the present labourers, and in other labourers being brought into the parish, and that a better tone and character would be given to the parish, and that in case of inclosure, a most suitable recreation ground would be set out, and also allotments for field-gardens for the labouring poor would be set out in the most convenient situations, and of suitable land, and that such allotments would be of direct benefit to the neighbourhood; that the parish is well stocked, and inclosure would lessen the chance of infectious diseases; that for some years the land would all probably be, or be turned into, arable, though perhaps after some years some of the land might be laid down in grass; that regulation would be of little or no use in this case, and money would not be laid out if there were only regulation, and indeed the lord of the manor and all parties were unanimous in favour of inclosure, and did not wish for, and would not be at any expense for, regulation only.

31. There was a previous application in 1871, and meetings held thereon, but the matter, like many others, stood over till the New Commons Act was passed.

32. The Fox and Hounds Inn, in North Luffenham, would be a convenient place for holding meetings in this and the North Luffenham Inclosure.

33. Luffenham railway station is in the centre of the lands in question.

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34. The places for affixing notices in the parish are the church door and the post office.

35. Proof of service of notice of the application was given on Mr. Atter, the town clerk of the borough of Stamford, the corporation of the borough being the sanitary authority, and Mr. Atter, who was present, admitted the service, and he said that the matter was formally brought before the Corporation, and he had no instructions in the matter; he also said that, under a recent inclosure, recreation ground had been set out for Stamford.

I inspected the land proposed to be inclosed, and annex a sketch thereof hereto.

I report in favour of the expediency of the inclosure regarded both in relation to the benefit of the neighbourhood and to private interests; the greater part of the land to be inclosed is open field land owned by several owners in strips, so many as 1,238, several strips being owned by the same persons, but spread about, and in disconnected positions, and the average per strip being only a little over half an acre, and this quite prevents due cultivation of the land, which is consequently badly farmed, and much less produce is obtained than the land is capable of producing; and it is also a source of dispute both as regards the boundaries of strips, and the manner of cultivation, and public and private interests both suffer; and as regards the heath it is of but little value at present, and is but little used for recreation, but is capable of great improvement. If there were inclosure, money would be laid out upon the land, which would then be duly cultivated, and give increased produce, and there would be increased employment of labour and increased value of land for rateable and other purposes, and better roads would be made, and the tone and character of the parish would be improved, and its advantages developed, and there would be a direct and special gain to the neighbourhood in public allotments for recreation and for field gardens for the labouring poor being set out in situations both convenient and suitable.

The file of papers is returned herewith.

I have &c.
(signed) *Charles Wood.*

The Inclosure Commissioners for England and Wales.

— 3. —

PROVISIONAL ORDER for the INCLOSURE of a COMMON.

WHEREAS persons interested in certain lands called or known as The Open Fields, situate in the parish of South Luffenham and The Heath (including Flasket or Plasket Leys), or so much thereof as is within the said parish, in the county of Rutland—such lands being a common within the meaning of "The Inclosure Acts, 1845 to 1876"—have made application to the Inclosure Commissioners for England and Wales to issue a Provisional Order for the inclosure of such common, and to certify that it is expedient that such Provisional Order should be confirmed by Parliament:

And whereas it has been made to appear to the said Commissioners that the persons making the said application represent at least one-third in value of such interests in the said common as are proposed to be affected by the Provisional Order:

And whereas the said Commissioners, having taken the said application into consideration, were satisfied that a *primâ facie* case had been made out, and that, regard being had to the benefit of the neighbourhood as well as to private interests, it was expedient to proceed further in the matter, and accordingly ordered a local inquiry to be held by an Assistant Inclosure Commissioner:

And whereas the said Assistant Commissioner having inspected the said common, and having caused public notice to be given as required by the said Acts, held, pursuant to the said notice, public meetings on the 6th day of April 1877, at half-past 10 o'clock in the forenoon, and at 7 o'clock in the evening, at the "Fox and Hounds Inn," North Luffenham, to hear all person desirous of being heard on the subject matter of the said application, and any information or evidence which might be offered in relation thereto, and inquired into the correctness of the statements in the said application, and otherwise into the expediency of making the Provisional Order applied for, and into the nature of the provisions to be inserted in such Provisional Order:

And whereas the said Assistant Commissioner duly reported in writing to the said Commissioners the result of the local inquiry and of the public meetings held by him, together with the information obtained by him as to the several particulars in the said application, and all other information required by the said Acts, and annexed to his Report a map of the said common, a copy of which map is hereto annexed:

And

And whereas the Right Honourable Gilbert Henry Baron Aveland, as lord of the manor of South Luffenham, is entitled to the soil of that part of the heath known as Flasket Leys:

And whereas a difference is pending between the Most Honourable William Alleyne, Marquis of Exeter, as lord of the hundred of Wrangdyke and manor of Barrowden, and the said Right Honourable Gilbert Henry Baron Aveland, as lord of the said manor of South Luffenham, as to the ownership of the soil of the heath (exclusive of Flasket Leys) or so much thereof as is within the said parish of South Luffenham:

Now, therefore, in pursuance of the powers given to us by the said Acts, we, the Inclosure Commissioners for England and Wales, being satisfied that, having regard to the benefit of the neighbourhood, as well as to private interests, the inclosure of the said common is desirable, have framed, for the consideration of the persons interested, this our draft Provisional Order, specifying the terms and conditions on which, provided the necessary consents are given thereto, we are prepared to certify that it is expedient the Provisional Order should be confirmed by Parliament; that is to say,

That the plot of grass at the junction of the roads at the spot marked A on the map hereto annexed, and four acres in the open fields near the village, at or near the spot marked B on the said map, be allotted for recreation ground.

That 15 acres in the open fields adjoining the recreation ground at or near the spot marked C on the said map be allotted for field gardens.

That carriage roads, bridle roads, and footpaths be set out to the satisfaction of the Inclosure Commissioners as may be found necessary and convenient.

That one-sixteenth part in value of that part of the heath known as Flasket Leys, be allotted, under the provisions of the said Acts, to the said Gilbert Henry Baron Aveland, as lord of the said manor of South Luffenham, in lieu of his right and interest in the soil thereof, inclusively of his right and interest in all mines, minerals, stone, and other sub-strata under the same, but exclusively of any right of pasturage or other right of common, or interest in the nature of a right of common, which may have been usually enjoyed by such lord or his tenants upon the said land, which said right of pasturage or other right (if any) is to be compensated by allotments or otherwise, independently of the allotment hereby stipulated in respect of his right and interest in the soil.

That one-sixteenth part in value of the heath (exclusive of Flasket Leys), or of so much thereof as is within the parish of South Luffenham, be allotted under the provisions of the said Acts to the owner of the soil thereof, in lieu of his right and interest in the soil thereof, inclusively of his right and interest in all mines, minerals, stone, and other sub-strata under the same, but exclusively of any right of pasturage or other right of common, or interest in the nature of a right of common, which may have been usually enjoyed by such owner or his tenants upon the said land, which said right of pasturage or other right, if any, is to be compensated by allotments or otherwise, independently of the allotment hereby stipulated in respect of his right and interest in the soil.

In witness whereof we have hereunto set our official seal, this Twenty-sixth day of April, One thousand Eight hundred and Seventy-seven.

L. S.

Appendix, No. 2.

— 4. —

CONSENTS.

We, the undersigned, being persons interested in certain lands called or known as the Open Fields, situate in the parish of South Luffenham and the heath (including Flasket or Plasket Leys), or so much thereof as is within the said parish, in the county of Rutland, whose interests will be affected by the draft Provisional Order for the inclosure of the said lands, framed by the Inclosure Commissioners for England and Wales, and dated the 26th day of April in the year of our Lord 1877, do hereby signify our consent to such draft Provisional Order.

Witness our hands

(signed) *Ed. N. Conant.* *William Wood,* *George Tailby,* } Churchwardens.

Elizabeth Cooper. *Robt. Tomlinson,* *William Wood,* } Managers of the South Luffenham National School.

Thomas Pridmore. *Mary Pridmore.* *Elizabeth Ball.* *Wm. Ch. Pridmore.* *John Islip.* *Joseph Freeman.* *Sarah Pridmore.*

William Daniel Rice. *Jane Ball.* *William Pepper.* *John Rose.* *George Tailby.* *Henry Richardson Clarke.*

The within consent was signed by Edward Nathaniel Conant, Esquire, in the presence of

C. Swann Shield,
35, Granville-place, Gentleman.

The within consent was signed by Elizabeth Cooper, Thomas Pridmore, Mary Pridmore, Elizabeth Ball, William Charles Pridmore, John Islip, Joseph Freeman, Sarah Pridmore, William Wood, George Tailby, Robert Tomlinson, William Daniel Rice, Jane Ball, William Pepper, John Rose, and Henry Richardson Clarke, in the presence of

J. E. Atter, Solicitor, Stamford.

(signed) *Aveland.*

Witness to the signature of Gilbert Henry Baron Aveland.

Miles William Aveland,
Secretary to Lord Aveland,
Normanton Park, Rutland.

(signed) *Exeter.*

Witness to the signature of William Alleyne Marquis of Exeter.

R. P. Thompson,
Captain Northampton and Rutland Militia.

(signed) *John Morris.*

Signed by the within named John Morris, in the presence of

Geo. Robinson, clerk to J. E. Atter,
Solicitor, Stamford.

For the Midland Railway Company,

(signed) *E. S. Ellis,* Chairman.

COUNTY OF RUTLAND.

INCLOSURE COMMISSION.

NORTH LUFFENHAM INCLOSURE.

— 1. —

APPLICATION to the Inclosure Commissioners for England and Wales for a Provisional Order for the Inclosure of a Common under the Provisions of "The Inclosure Acts, 1845 to 1876."

THE land to which this application relates is situated in the parish of North Luffenham, in the county of Rutland, and is commonly known as North Luffenham Open Fields and North Luffenham Cow Pasture.

We, the undersigned, being persons representing at least one-third in value of such interests in the land above mentioned as are to be affected, propose the inclosure of such land, under "The Inclosure Acts, 1845 to 1876," and submit to the Inclosure Commissioners for England and Wales the information in respect to such land, and to the proposed inclosure, required by the questions hereunto annexed, believing such information to be correct: And we hereby apply to the Commissioners, if satisfied that it is desirable, to issue a Provisional Order, and to certify that it is expedient that such Provisional Order should be confirmed by Parliament.

(signed) *Aveland.* *William Daniel Rice.*
Ed. N. Conant. *John Rose.*
Henry Heathcote. *Everard King,* } Churchwardens.
Philip G. Dennis. *Henry Hart,* }
R. Lucas. *J. Morris.*

INFORMATION to be furnished to the Inclosure Commissioners respecting the Common to which the foregoing application relates.

1. What is the extent in statute acres of the land proposed to be inclosed, and from what source was the area obtained?	1,636 A. 3 R. 9 P.
2. Does the land lie together? If in separate tracts, what is the acreable extent of each?	Yes.
3. Is the land proposed to be inclosed waste and uncultivated land, arable, meadow, pasture, or woodland? If of different kinds, what is the acreable extent of each?	1,493 A. arable, 143 A. 1 R. 23 P. pasture, besides part of the heath, the quantity of which is not defined.
4. What is the nature of the soil?	Every description, from clay to light loam.
5. Does any part of the land abut upon the shore of the sea, or of a tidal navigable river?	No.
6. Are there any open mines, or any minerals, or valuable strata, now in course of being worked, or known to have been formerly worked, or known or supposed to exist in or under the land? If so, what is the nature of these mines, minerals, or valuable strata, and the extent of the workings, if any; and is the property of these mines, minerals, and valuable strata separate from the ownership of the soil, or otherwise, and are they worked by the owners or by lessees?	There are no mines or minerals known to exist under the land. A little sand is dug by the owners of the soil, but the whole amount dug does not amount to one acre.

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7. Is the Crown interested in any part of the land?	No.
8. Is all or any, and if any, what part of the land proposed to be inclosed, waste land of a manor, on which the tenants of such manor have rights of common? If so, give the name of the manor and of the lord.	A principal portion of the land proposed to be inclosed is known as the North Luffenham Cow Pasture. It lies within, and is part of, the manor of North Luffenham, of which Lord Aveland is lord. Certain common rights have been exercised over it by the inhabitants of the parish of North Luffenham, and owners of ancient tofthouses, but these common rights have not been very clearly defined by stint or otherwise, and will be a proper subject of inquiry by the Commissioner.
9. Is all or any, and if any, what part of the land proposed to be inclosed subject to rights of common which may be exercised at all times of the year for cattle levant and couchant upon other land, or to any rights of common which may be exercised at all times of every year, and which are not limited by numbers or stints?	
10. Is the land proposed to be inclosed, or any and what part of it, subject to any, and what, rights of common not mentioned in Questions 8 and 9, or is all or any, and what, part of it, gated or stinted pasture, or what are the rights affecting such land, or the several tracts, if more than one, which are supposed to make it subject to be inclosed under the Inclosure Acts, 1845 to 1876?	The tenants of the arable land alone have rights of common over the arable land.
11. Is the common, or any part thereof, situate within the Metropolitan Police District?	No.
12. Is the common a suburban common; that is to say, is it situate, either wholly or partly, in any town or towns, or within six miles of any town or towns?	Stamford (8,344 population).
13. State the distance of the common from any neighbouring towns or villages, and the population of such towns or villages.	About a mile distant from South Luffenham, which is the nearest village.
14. What is the number of the inhabitants of the parish, township, or place, or several parishes, townships, or places, in which the land proposed to be inclosed is situated, according to the last Parliamentary census?	North Luffenham, 476 inhabitants at last census.
15. What are the chief occupations of the inhabitants—agricultural, manufacturing, or otherwise? And what kinds of manufactures, if any, are chiefly carried on?	Entirely agricultural.
16. Is there any town green or village green in the parish or place within which the land proposed to be inclosed is situated, or any ground other than the common available for the recreation of the neighbourhood? If so, give particulars as to area, situation, and character, and to what extent it is used by the public for recreation.	No village green. A piece of land in the village has been used for recreation.
17. Do the inhabitants of the neighbourhood resort to the common for purposes of recreation? And is any particular part used for playing games?	Very little; and no regular or systematic games played there.
18. Is it proposed that any, and if any, what allotment should be made for recreation ground? Is the land proposed to be so allotted conveniently situated, and otherwise suitable for the purpose?	Probably more is required in the present case. If any, it is proposed to leave the question of amount to the Commissioner.
19. State	About

19. State the number of cottages in the neighbourhood, and whether or not they have gardens attached. Give information as to the average size of such gardens, and as to any other land now available for gardens for the poor inhabitants.	About 90 cottages. About 15 have good gardens attached.
20. Is it proposed that any, and if any, what, allotment should be made for field-gardens? Is the land proposed to be so allotted conveniently situated, and suitable for the purposes of cultivation as gardens?	Yes. The quantity and position to be left to the Commissioner.
21. Do the applicants suggest that, for the benefit of the neighbourhood, any of the following terms and conditions which may be applicable, should be inserted in the Provisional Order?	
(1.) That free access be secured to any particular points of view;	
(2.) That particular trees, or objects of historical interest, be preserved;	
(3.) That there be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation at such times, and in such manner, and on such parts of the common, as may be thought suitable;	
(4.) That carriage roads, bridle-paths, and footpaths over the common be set out in such directions as may appear most commodious;	This should be provided for.
(5.) That any other specified thing be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.	
22. If the lord of the manor is entitled to the soil, what allotment has been agreed or is proposed to be made to him in respect of his right and interest, and is the allotment proposed to include a compensation for his interest in all or any of the mines, minerals, and substrata?	No arrangement has been made, but it is proposed to leave the value of the manorial rights to the Commissioner.
23. What is the number, so far as can be ascertained, of the parties interested as owners of the soil, common rights, or otherwise, in the land proposed to be inclosed? How many of the persons so interested have assented to this application?	Fourteen owners of the soil. Nine of the largest owners have signed this application.
24. What proportion does the value of the interest of the assenting parties bear to the whole value of the interests in the land proposed to be inclosed?	Persons signing this application represent upwards of four-fifths in value.
25. How many of the parties interested have dissented from the application, and what is the proportion of their interests to the whole value of the interests in the land?	None that we are aware of.
26. How have the values of interests been ascertained—by the assessment to the poor rate, by number of stints, or how otherwise?	Poor rate.
27. Is there any litigation, dispute, or question as to the boundaries of the land proposed to be inclosed, or the mines, minerals, or strata in or under it? If so, between whom has it arisen?	There are disputes and questions as to the boundary between the parishes of North and South Luffenham involving the question of which parish has a right to turn on stock to the heath, but the settlement of the whole of the questions involved should be left to the Commissioner.

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28. Would any exchanges with owners of land not subject to be inclosed be desirable?	None.
29. State particularly the advantages anticipated from the inclosure of the common as opposed to its regulation; and also the reasons why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood.	In increased productiveness, increased employment of labour, and greatly increased value. The arable lands being now in so many small pieces cannot be so profitably cultivated as they will be when inclosed.
30. What advantages do the applicants anticipate from the inclosure in relation to private interests?	As above stated.
31. Has any previous application for the inclosure or regulation of the lands referred to in this application been made? If so, give the date of such application.	Yes. Proposal was sent in on the 16th of January 1871.
32. Name an inn or other convenient place in the parish for holding meetings.	"The Fox and Hounds" Inn, North Luffenham.
33. What is the railway station nearest to the common, and to the proposed place for holding meetings, and what is the distance of such railway station?	Luffenham station is about one mile distant.
34. Name the places on which it will be necessary to affix notices of public meetings to be held by the Assistant Commissioner, in order to comply with the direction in the 11th sect. of "The Commons Act, 1876," that copies shall be posted on the church door, on or near the common, at the post office or post offices, at any town hall or vestry hall, or other building or room, the expense of maintaining which is payable out of any local rate, and at all places in the parish or district where notices are usually posted.	The church door, the door of the chapel, and the post office in the village.
35. The application must be accompanied by a map on tracing cloth, clearly defining the lands proposed to be inclosed; and by copies of the newspapers containing the advertisement of the intended application; and also, in the case of a suburban common, by proof of service of notice on the urban sanitary authority or authorities.	Map, newspapers, and notices accompany application.

— 2. —

ASSISTANT COMMISSIONER'S REPORT on Local Inquiry Meetings as to Proposed Inclosure.

Gentlemen, April 1877.

I HAVE the honour to report that, on the 6th day of April 1877, I held a public meeting, at 11 o'clock in the forenoon, at the "Fox and Hounds" Inn, in the parish of North Luffenham, in the county of Rutland; and a second public meeting at the same place, at the hour of half-past seven in the evening of the same day, for the purpose of hearing all persons desirous of being heard on the subject-matter of an application for a Provisional Order for the inclosure of the commons and open fields situate in the parish of North Luffenham aforesaid, whether considered in relation to the benefit of the neighbourhood or to private interests; and for receiving any information or evidence which might be offered in relation thereto.

It was proved that notice of meeting was posted on the principal outer door of the parish church of North Luffenham, on the door of the Wesleyan chapel in the said parish, and in the window of the post office, where public notices are posted, on the 14th day of March last. There are no other places usual in the parish for posting notices; the church and post office are near the open fields.

There were present at the morning meeting: Mr. James Flux, from the office of Mr. Travers Smith, London, solicitor for, and holding power of attorney from, Lord Aveland, lord of the manor of North Luffenham; Mr. Atter, solicitor, Stamford, steward of the manor of South Luffenham; and for Mr. Cooper, freeholder in South Luffenham; Mr. Thomas Sturgess, estate agent for Lord Aveland; Mr. Richardson Thompson, of Stamford, solicitor for, and holding power of attorney from, the Marquis of Exeter, lord of the manor of Barrowden, and freeholder in South Luffenham; the Rev. Phillip Dennis, rector of North Luffenham; Mr. Shield, of Uppingham, solicitor for Mr. E. N. Conant, freeholder in South and North Luffenham, for Mr. and Mrs. Rowley, freeholders in South Luffenham, for Mr. Henry Barnes, freeholder in South Luffenham, for Mr. William Daniel Rice, freeholder in North and South Luffenham, and for Mr. William Pepper, freeholder in South Luffenham, Mr. Pepper being himself also present; Mr. John Dickens, mason, freeholder in North Luffenham; Mr. Henry Bollams, bootmaker, in South and North Luffenham; Mr. John Rose, timber merchant, freeholder in North and South Luffenham; Mr. Robert Tomlinson, overseer of the poor for South Luffenham, and rate collector for North Luffenham, and tithe collector for both parishes.

At the evening meeting there were present: Mr. Flux, Mr. Thompson, Mr. Shield, Mr. Sturgess, Mr. Rose, Mr. Atter, all of whom were present at the morning meeting; and Mr. Robert Bowder, of Castle Bytham, baker and grocer, owner of houses in South Luffenham; and Mr. Joseph Freeman, freeholder in the open fields of South Luffenham, and having a limekiln; Mr. Atter also appearing for Mr. Rose, Mr. Bowder, and Mr. J. Freeman.

1. The land proposed to be inclosed is generally known as the Open Field land, the Cow Pasture, the High Pasture, the Great Meadow, and the Little Meadow, and is estimated from the tithe apportionment to contain about 1,636 acres.

2 and 3. The land lies nearly altogether round the village, but is disconnected here and there; the quantity of arable land is about 1,493 acres, and of pasture land about 143 acres.

4. The nature of the soil is principally a light loam, there being a little clay here and there.

5. No part of the land abuts upon the shore of the sea, or of a tidal navigable river.

6. A little sand is dug by the owners of the soil, but otherwise no minerals are known to exist; if there be any, the property in them is not separate from the ownership of the soil.

7. The Crown is not interested in any part of the land.

8, 9, and 10. No part of the land proposed to be inclosed is waste of a manor; it is all open field or Lammas land; the owners of the land own in known acres, and after the crops are gathered they turn on till the land is wanted for cultivation, stocking by stints according to number of acres; as regards the Cow Pasture, a question was raised, but was afterwards settled; the owners of stints turn on a fixed number of stock from the 1st May to the 25th December; it is then closed till 1st May again. On behalf of the owners of stints it was claimed that the soil of the Cow Pasture is vested in the owners of the stints, and that originally it was owned in fixed number of acres by each owner, and that so many stints went to the acre, and that the precise acres have been lost as to situation, and that the rights are now known by number of stints. On the occasion of the meeting in the application for inclosure in 1871 there was produced to me, and it was desired it should

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be deemed as produced at the present meeting, a copy of an old survey of 1660 by one Vincent Wing (an owner), but without it appearing under what circumstances it was taken, or where the original was (though it was said there were several copies in existence), showing the Cow Pasture to have been owned by several persons in several acres in a similar manner to the open fields, and the Rev. Mr. Dennis said he had taken extracts from the terriers in the registry at Peterborough, showing glebe land of so many acres in the Cow Pasture; under these circumstances, claim to the soil as waste of the manor of North Luffenham was not pressed on behalf of Lord Aveland, the lord of the manor, and so none of the land proposed to be inclosed is to be deemed waste of a manor. The land is open field land and Lammas land, and there are not supposed to be other rights but what attach to such lands as before mentioned. It was said the owners of houses without land had not turned on, unless perhaps one had occasionally turned on the heath near Foster's Bridge, hereinafter mentioned; if any such owners think they have right, they may claim during the inclosure proceedings if so advised.

11. No part of the common is situate within the metropolitan district.

12 and 13. The common is within six miles of Stamford, having within the Parliamentary borough 8,086 inhabitants, and within the municipal borough 7,846, and the common is distant from Uppingham about five and a-half miles, having in the town 2,464 inhabitants, and within the parish 2,601 inhabitants; it is about a mile distant from South Luffenham.

14. The number of inhabitants of the parish of North Luffenham is 476.

15. The occupation of the inhabitants is entirely agricultural.

16 There is no village green; a piece of land near the village, part of the open fields, being grass, has been used for recreation, and it is intended to set out this piece as recreation ground.

17. Cricket has been occasionally played on the Cow Pasture, but it is not used nearly so much as the piece before mentioned.

18. As regards recreation ground: the population of the parish is 476; it is proposed to set out as a recreation ground the piece of land before mentioned close to the village, and which has been used for recreation; it is convenient and picturesque, with fine trees upon it, and yet with sufficient open space for games; four acres had been intended to be set out, and it was supposed that this piece of land was about four acres, but on more careful examination, and on reference to the tithe map, it is found to contain 5 A. 1 R. 8 P., being Nos. 739, 740, and 741, but it could not be cut up without being spoiled, and so the whole piece 5 A. 1 R. 8 P. is to be set out as a recreation ground. I have marked the position on the sketch, hereto annexed, with the letter A.

19 and 20. As regards allotments for field gardens for the labouring poor; there are about 80 small tenements, several being under one roof; that is, one house turned into several small tenements; several have no gardens, and only one or two have as much as a rood, the most having only a few perches; some owners in the open fields let off about six acres in allotments of half roods and roods, and there are also two acres let off in what are called tradesmen's gardens, for small tradesmen, in allotments of about half roods; it is proposed to set out 15 acres for field-gardens for the labouring poor in a convenient situation near the village, and of suitable land, and I have marked the position in the sketch, hereto annexed, with the letter B; the six acres will be included in the 15 acres. On the occasion of the meeting on application for inclosure in 1871, a petition to the Inclosure Commissioners, signed by several inhabitants of North Luffenham, for the appropriation of allotments for exercise and recreation, and for gardens for the labouring poor as convenient as possible, was handed in to me, and was forwarded by me to the Commissioners, and it is on the file of papers.

21. (1.) It is not necessary for free access to be secured to any particular points of view.

(2.) There are some trees on the piece of land proposed to be set out as a recreation ground, and it is desirable such trees should be preserved, and they will be as an, and ornaments, to the recreation ground.

(3.) Recreation ground is to be set out, and it is not necessary to reserve any special privilege of playing games.

(4.) It is intended that necessary and convenient roads should be set out in the inclosure.

(5.) There is not any other specified thing to be done which might be thought equitable and expedient, regard being had to the benefit of the neighbourhood.

22. There is no waste; if the small piece of heath near Foster's Bridge should be deemed to be within North Luffenham, the lord will not make any claim in respect of his ownership of soil.

23, 24, 25, and 26. There are about 14 persons interested, of whom nine have signed the application; the total rateable value of the parish, less tithe, is 3,323 *l.*, and one-third of this

this sum is 1,107 *l.*, and two-thirds are 2,214 *l.*; the total rateable value of the lands of persons who have signed is 2,182 *l.*, being much more than one-third of the total value, and further assent can be obtained; moreover, in the rateable value of the parish, the full rateable value of the London and North Western and Midland Railways in the parish is included, being a total of 546 *l.*; but, with reference to inclosure, deduction should be made for this, and so the rateable value of the parish would be less, and the proportion of assenting interest greater; no doubt whatever is entertained that assent representing more than two-thirds of the whole interest can be obtained, and no one has dissented from the inclosure.

27. There appeared to be no dispute as to boundaries or minerals, except that a doubt was expressed as to a small portion of Luffenham Heath near Foster's Bridge, whether it was in the parish of South Luffenham or North Luffenham, but the portion is small, and has been cut in two by the railway, and probably it can be settled without a formal meeting, but if necessary one could be held during the progress of the inclosure.

28. No exchanges are contemplated.

29 and 30. As regards the advantages anticipated from the inclosure of the common as opposed to regulation, and the reason why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood and to private interests, information to the following effect was furnished: That at present the Open Field Lands are *owned* in small strips, spread about and in disconnected situations, the number of strips being 1,631, giving an average of less than an acre; that this prevents the proper cultivation of the land, and is also productive of disputes as to boundaries, and as to manner of cultivation; that in its present state the land cannot be properly farmed, and the owners will not lay out capital in improving or draining the land, nor, indeed, sufficient to cultivate it so as to get out of it the produce which, under proper farming, could be got; that it cannot be properly sheep-farmed in its present state, and so a profitable mode of farming is obstructed; that if inclosed there is no doubt capital would be laid out upon the land, and its productiveness increased and the rateable value increased; that it is estimated the land would be increased *one-third in value if inclosed*; and that *mere regulation* would be of little or no use; that if there were inclosure there would be considerable increase in the employment of labour, both in more regular and fuller employment being given to the present labourers, and in other labourers being brought into the parish, and that a better tone and character would be given to the parish, and that in case of inclosure a most suitable recreation ground would be set out, and also allotment for field-gardens for the labouring poor would be set out in the most convenient situation and of suitable land, and that such allotments would be of direct benefit to the neighbourhood; that the parish is well stocked, and inclosure would lessen the chance of infectious diseases; that for some years the land would all probably be, or be turned into, arable, though perhaps, after some years, some of the land might be laid down in grass; that regulation would be of little or no use in this case, and money would not be laid out if there were only regulation; and, indeed, the lord of the manor, and all parties, were unanimous in favour of inclosure, and did not wish for, and would not be at any expense for, regulation only.

31. There was a previous application in 1871, and a meeting held thereon, but the matter, like many others, stood over till the New Commons Act was passed.

32. The "Fox and Hounds" Inn would be a convenient place in the parish for holding meetings.

33. Luffenham Railway Station is about a mile distant.

34. The places for affixing notices in the parish are the church door, the Wesleyan chapel, and the post-office.

35. Proof of service of notice of the application was given on Mr. Atter, the town clerk of the borough of Stamford, the corporation of the borough being the sanitary authority, and Mr. Atter, who was present, admitted the service, and he said that the matter was formally brought before the corporation, and he had no instructions in the matter; he also said that, under a recent inclosure, recreation ground had been set out for Stamford.

I inspected the land proposed to be inclosed, and annex a sketch thereof hereto.

I report in favour of the expediency of the inclosure, regarded both in relation to the benefit of the neighbourhood and to private interests. The land to be inclosed is open field land owned by several owners, in strips, so many as 1,631, several strips being owned by the same persons, but spread about and in disconnected positions, and the average per strip being less than an acre, and this quite prevents due cultivation of the land, which is consequently badly farmed, and much less produce is obtained than the land is capable of producing, and it is also a source of dispute, both as regards the boundaries of strips and the manner of cultivation, and public and private interests both suffer. If there were inclosure, money would be laid out upon the land, which would then be duly cultivated and give increased produce, and there would be increased employment of labour and in-

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creased value of land for rateable and other purposes, and better roads would be made, and the tone and character of the parish would be improved, and its advantages developed, and there would be a direct and special gain to the neighbourhood in public allotments for recreation and for field gardens for the labouring poor, being set out in situations both convenient and suitable.

The file of papers is forwarded herewith.

I have, &c.

The Inclosure Commissioners for England and Wales. *Charles Wood.*

— 3. —

PROVISIONAL ORDER FOR THE INCLOSURE OF A COMMON.

WHEREAS persons interested in certain lands called or known as The Open Field Land, Cow Pasture, High Pasture, Great Meadow, and Little Meadow, situate in the parish of North Luffenham, in the county of Rutland, such lands being a common within the meaning of "The Inclosure Acts, 1845 to 1876," have made application to the Inclosure Commissioners for England and Wales to issue a Provisional Order for the inclosure of such common, and to certify that it is expedient that such Provisional Order should be confirmed by Parliament:

And whereas it has been made to appear to the said Commissioners that the persons making the said application represent at least one-third in value of such interests in the said common as are proposed to be affected by the Provisional Order:

And whereas the said Commissioners, having taken the said application into consideration, were satisfied that a *primâ facie* case had been made out, and that, regard being had to the benefit of the neighbourhood, as well as to private interests, it was expedient to proceed further in the matter, and accordingly ordered a local inquiry to be held by an Assistant Inclosure Commissioner:

And whereas the said Assistant Commissioner, having inspected the said common, and having caused public notice to be given as required by the said Acts, held, pursuant to the said notice, public meetings on the 6th day of April 1877, at 11 o'clock in the forenoon, and at half-past 7 o'clock in the evening, at the "Fox and Hounds" Inn, in the said parish, to hear all persons desirous of being heard on the subject-matter of the said application, and any information or evidence which might be offered in relation thereto, and inquired into the correctness of the statements in the said application, and otherwise into the expediency of making the Provisional Order applied for, and into the nature of the provisions to be inserted in such Provisional Order:

And whereas the said Assistant Commissioner duly reported, in writing, to the said Commissioners the result of the local inquiry and of the public meetings held by him, together with the information obtained by him as to the several particulars in the said application, and all other information required by the said Acts, and annexed to his report a map of the said common, a copy of which map is hereto annexed:

Now, therefore, in pursuance of the powers given to us by the said Acts, We, the Inclosure Commissioners for England and Wales, being satisfied that, having regard to the benefit of the neighbourhood, as well as to private interests, the inclosure of the said common is desirable, have framed, for the consideration of the persons interested, this our Draft Provisional Order, specifying the terms and conditions on which, provided the necessary consents are given thereto, we are prepared to certify that it is expedient the Provisional Order should be confirmed by Parliament, that is to say—

That the piece of land in the Open Fields, near the village and the school, at the spot marked A on the map hereto annexed, containing five acres one rood and eight perches, or thereabouts, be allotted for recreation ground.

That twenty acres in the Open Fields, adjoining the recreation ground, at or near the spot marked B on the said map, be allotted for field gardens.

That carriage-roads, bridle-roads, and footpaths, be set out to the satisfaction of the Inclosure Commissioners as may be found necessary and convenient.

In Witness whereof we have hereunto set our official seal this Twenty-sixth day of April, One thousand Eight hundred and Seventy-seven.

L. S.

— 4. —

CONSENTS.

We, the Undersigned, being persons interested in certain lands called or known as The Open Field Land, Cow Pasture, High Pasture, Great Meadow, and Little Meadow, situate in the parish of North Luffenham, in the county of Rutland, whose interests will be affected by the Draft Provisional Order for the Inclosure of the said lands, framed by the Inclosure Commissioners for England and Wales, and dated the 26th day of April in the year of our Lord 1877, do hereby signify our consent to such Draft Provisional Order.

Witness our hands,

(signed) *R. Lucas.*
Ed. N. Conant.
William Henry Heathcote,
T. B. Brown,
R. Lucas,
Philip G. Dennis, } Trustees of the North Luffenham Town Estate.
Philip G. Dennis, Rector.
Henry Hart,
Everard King, } Churchwardens.
William Daniel Rice.
John Rose.
John Dickens.
Aveland.
E. S. Ellis, (Chairman, for the Midland Railway Company).
John Morris.
W. C. Morris,
C. K. Morris,
William Keal, } Trustees of W. R. Morris, deceased.

The within consent was signed by Edward Nathaniel Conant, Esquire, in the presence of

C. Swann Sheild,
35, Granville-square, gentleman.

The within consent was signed by Richard Lucas, William Henry Heathcote, T. B. Brown, P. G. Dennis, Henry Hart, Everard King, William Daniel Rice, John Rose, and John Dickens, in the presence of

J. E. Atter,
solicitor, Stamford.

Witness to the signature of Gilbert Henry Baron Aveland,

Miles Wm. Newman,
Secretary to Lord Aveland,
Normanton-park, Rutland.

The within consent signed by John Morris, W. C. Morris, C. K. Morris, and William Keal, in the presence of

Geo. Robinson,
Clerk to J. E. Atter, solicitor,
Stamford.

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COUNTY OF YORK.

INCLOSURE COMMISSION.

RICCALL INCLOSURE.

— 1. —

APPLICATION to the Inclosure Commissioners for England and Wales for a Provisional Order for the Inclosure of a Common under the provisions of "The Inclosure Acts, 1845 to 1876."

THE land to which this application relates is situated in the parish of Riccall in the East Riding of the county of York, and is commonly known as Riccall Common, Riccall Dam, and Riccall Open Field Lands.

WE, the undersigned, being persons representing at least one-third in value of such interests in the land above-mentioned as are to be affected, propose the inclosure of such land, under "The Inclosure Acts, 1845 to 1876," and submit to the Inclosure Commissioners for England and Wales the information in respect to such land, and to the proposed inclosure, required by the questions hereunto annexed, believing such information to be correct; and we hereby apply to the Commissioners, if satisfied that it is desirable, to issue a Provisional Order, and to certify that it is expedient that such Provisional Order should be confirmed by Parliament.

Owners of Common Rights.	Owners of Commonable Land.
(signed) *Wenlock.*	*Wenlock.*
James Pratt.	*J. R. Farrow.*
J. R. Farrow, Trustee for Riccall School.	*Thos. Bulmer.*
Wm. Camplejohn.	*Jane Davison.*
Thos. Romans.	*John Hawkins.*
John Romans.	*John Nicholson.*
John Morley.	*George Bradley*, Overseer.
Richard Moon.	*Richard Moon.*
Joseph Creaser.	*F. H. Romans* by *John Romans.*
Henry Silversides.	*Elizabeth Swinbank.*
Thos. M. Weddall.	*John Silversides.*
Joseph Mawson.	*George Swinbank.*
	James Oldridge.

INFORMATION to be furnished to the Inclosure Commissioners respecting the Common to which the foregoing application relates.

1. What is the extent in statute acres of the land proposed to be inclosed, and from what source was the area obtained?

The Tithe Apportionment Award shows that the lands proposed to be inclosed consist of

	Acres.
Common and waste	492
Dam pasture	114
Open fields	745
	1,351

2. Does the land lie together? If in separate tracts, what is the acreable extent of each?

No, in seven separate tracts, viz.:

	Acres.		Acres.
A. Riccall Common	492	E. North field	16
B. Riccall Dam	114	F. Crook Urnel	19
C. West field	523	G. Kings Ruddings	20
D. East field	113	Orchards and Gardens	54
			1,351

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3. Is the land proposed to be inclosed waste and uncultivated land, arable, meadow, pasture, or woodland? If of different kinds, what is the acreable extent of each?

The dam is a pasture without stint. The open fields are all arable except about 100 acres coloured green, in West Field. No part woodland.

4. What is the nature of the soil?

The open fields vary from light sand to a stiff loam. The dam is a rich alluvial soil. The common is chiefly composed of light porous sand.

5. Does any part of the land abut upon the shore of the sea, or of a tidal navigable river?

Yes, a portion of the West Field abuts upon the River Ouse, which is both tidal and navigable.

6. Are there any open mines, or any minerals, or valuable strata, now in course of being worked, or known to have been formerly worked, or known or supposed to exist in or under the land? If so, what is the nature of these mines, minerals or valuable strata, and the extent of the workings, if any; and is the property of these mines, minerals, and valuable strata, separate from the ownership of the soil or otherwise, and are they worked by the owners or by lessees?

No minerals or valuable strata are now being worked, or supposed to exist.

7. Is the Crown interested in any part of the land?

No.

8. Is all, or any, and if any, what part of the land proposed to be inclosed, waste land of a manor, on which the tenants of such manor have rights of common? If so, give the name of the manor and of the lord.

The tenants have no right of common. These are restricted to the common-right owners, 21 in number.* Lord Wenlock is lord of the manor of Riccall-cum-Newbald and Cawthorpe.

9. Is all, or any, and if any, what part of the land proposed to be inclosed subject to rights of common which may be exercised at all times of the year for cattle levant and couchant upon other land, or to any rights of common which may be exercised at all times of every year, and which are not limited by numbers or stints?

The 21 owners of common-rights have the exclusive right of stray over the common and dam at all times of the year, and over the open field lands at specified times of the year; these latter are held as lammas or half-year lands. Few turn out on the common at all, owing to the worthlessness of the keep, but the dam is greatly overstocked, and, though valuable land, the grass, of excellent quality, is always so bare that the animals are half starved, and the return not half what it would be if inclosed and allotted. Great irregularities have sprung up as regards stocking. Formerly there was a sort of unwritten law that a common owner was not allowed to turn out more stock in the summer than he could winter on his inclosed land. Now those who have little or no inclosed land, purchase large numbers of sheep and turn them out without any restriction, to the great injury of others who abandon their right to turn out at all from a conviction that the land is so overstocked that their animals will suffer loss rather than advantage, and thus serious abuses have arisen.

10. Is the land proposed to be inclosed, or any, and what part of it, subject to any, and what, rights of common not mentioned in Questions 8 and 9; or is all, or any, and what part of it, gated or stinted pasture, or what are the rights affecting such land, or the several tracts, if more than one, which are supposed to make it subject to be inclosed under the Inclosure Acts, 1845 to 1876?

See answers to 8 and 9.

11. Is

* LIST of Common-Right Owners.

	Common Rights.		Common Rights.		Common Rights.
Lord Wenlock	86	Wm. Camplejohn	1	W. Allen	1
Wm. Elston	7	Townsley's trustees	1	Warrington and others	1
James Pratt	6	Roper's trustees	1	J. Creaser	1
Parker & Murdock	3	Thos. Romans	1	T. M. Weddall	1
Richard Moon	2	John Romans	1	J. Walker	1
Joh. Nicholson	2	H. Silversides	1		
Trustees of school	1	John Morley	1	TOTAL	121
Joseph Mawson	1	Geo. Bussey	1		

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11. Is the common or any part thereof situate within the Metropolitan Police District?	No.
12. Is the common a suburban common, that is to say, is it situate either wholly or partly, in any town or towns, or within six miles of any town or towns?	It is situate within six miles of the town of Selby, in the West Riding of the county of York, but is separated by a tidal, navigable river, the Ouse, the only access by road being over a toll bridge held by a private company.
13. State the distance of the common from any neighbouring towns or villages, and the population of such towns or villages.	The distance from Selby is five miles; population, 6,176. From York, 10 miles; population, 50,000. From the village of Escrick, four miles; population, 651. From the village of Wheldrake (603), seven miles.
14. What is the number of the inhabitants of the parish, township, or place, or several parishes, townships, or places, in which the land proposed to be inclosed is situated, according to the last Parliamentary Census?	Parish of Riccall. Population, 796.
15. What are the chief occupations of the inhabitants, agricultural, manufacturing, or otherwise; and what kinds of manufactures, if any, are chiefly carried on?	Agricultural exclusively. There are no manufacturers.
16. Is there any town-green or village-green in the parish or place within which the land proposed to be inclosed is situated, or any ground other than the common available for the recreation of the neighbourhood? If so, give particulars as to area, situation, and character, and to what extent it is used by the public for recreation.	There is nothing of the kind.
17. Do the inhabitants of the neighbourhood resort to the common for the purposes of recreation? And is any particular part used for playing games?	No; the nearest point of the common is three-quarters of a mile from the village, and it is not used for recreation or play-ground.
18. Is it proposed that any, and if any, what allotment should be made for recreation ground? Is the land proposed to be so allotted conveniently situated, and otherwise suitable for the purpose?	It is proposed to make an allotment for recreation ground. No particular site has been fixed upon. The common-right owners would leave this to the Commissioners.
19. State the number of cottages in the neighbourhood, and whether or not they have gardens attached. Give information as to the average size of such gardens, and as to any other land now available for gardens for the poor inhabitants.	About 120 cottages, mostly with gardens, ranging from 20 perches to one rood. In addition, Lord Wenlock provides 12 *a.* 0 *r.* 22 *p.* for allotments close to the village, which has hitherto fully supplied the demand.
20. Is it proposed that any, and, if any, what allotment should be made for field gardens? Is the land proposed to be so allotted conveniently situated, and suitable for the purposes of cultivation as gardens?	It is proposed to make such allotment as may be necessary to supplement the present provision already described. This question would also be left to the decision of the Commissioners.
21. Do the applicants suggest that for the benefit of the neighbourhood, any of the following terms and conditions which may be applicable, should be inserted in the Provisional Order?	
(1.) That free access be secured to any particular points of view;	There are no particular points of view.
(2.) That particular trees or objects of historical interest be preserved;	No trees or objects of interest to preserve.
(3.) That there be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation at such times, and in such manner, and on such parts of the common, as may be thought suitable;	No.
(4.) That carriage roads, bridle paths, and foot paths over the common be set out in such directions as may appear most commodious;	Yes, full accommodation to be provided for the accommodation of the public.
(5.) That any other specified thing be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.	Yes.

22 If

The

22. If the lord of the manor is entitled to the soil, what allotment has been agreed or is proposed to be made to him in respect of his right and interest, and is the allotment proposed to include a compensation for his interest in all or any of the mines, minerals, and sub-strata?

The lord of the manor is entitled to the soil, and has agreed to accept 1-16th of the common and waste as his allotment in lieu thereof. The lord of the manor proposes to retain his rights in mines, minerals, and sub-strata.

23. What is the number, so far as can be ascertained, of the parties interested as owners of the soil, common rights, or otherwise, in the land proposed to be inclosed? How many of the persons so interested have assented to this application?

Twenty-one owners of common rights; 25 owners of commonable lands. All have assented.

24. What proportion does the value of the interest of the assenting parties bear to the whole value of the interests in the land proposed to be inclosed?

See above.

25. How many of the parties interested have dissented from the application, and what is the proportion of their interests to the whole value of the interests in the land?

See above.

26. How have the values of interests been ascertained; by the assessment to the poor rate, by number of stints, or how otherwise?

By the assessment of the poor-rate.

27. Is there any litigation, dispute, or question as to the boundaries of the land proposed to be inclosed, or the mines, minerals, or strata in or under it? If so, between whom has it arisen?

No.

28. Would any exchanges with owners of land not subject to be inclosed be desirable?

Certainly; one great advantage anticipated from the inclosure is, that lands will be exchanged and so thrown more together.

29. State particularly the advantages anticipated from the inclosure of the common as opposed to its regulation; and also the reasons why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood?

The common is a light porous sand; in some places water accumulates owing to a clay sub-soil. This can be readily removed by drainage, for which there is an excellent outfall. Such soil is incapable of yielding good grass. With every advantage, such as draining and marling, the result would be wiry, unremunerative grass. It is a well-known fact, which has been proved over and over again, that such soil in alternate husbandry, *i.e.*, growing corn, roots, clover, &c., actually carries more stock than would be possible as grass, and has, in addition, half the area in corn. We confidently give an opinion that the advantage to be derived from improving the common as such, would not pay for the outlay; whereas, if broken up, drained, and partially marled, valuable agricultural land would result, worth, eventually, from 30 *s.* to 40 *s.* an acre.

30. What advantages do the applicants anticipate from the inclosure in relation to private interests?

The advantages to the neighbourhood are, that the land would be made more productive, as will be seen from the following calculation:

	£.
Annual produce of common if inclosed - - - - - -	3,344
Increase of produce from commonable land - - - - -	2,235
Increase of produce from pasture land - - - - - -	342
£.	5,921

In order to obtain this increased production regular employment would be afforded to a considerable number of labourers. It is probable that an outlay of 15,000 *l.* would be required in order to inclose, drain, make roads, &c., most of which would be expended in labour, an outlay which could not fail to be advantageous. Lastly, the common uninclosed harbours rabbits, which damage the crops on adjoining lands, and also offer temptations to vagrants and poachers, several convictions for both of which have been made by the magistrates.

(30.) Partly answered above, but it may be further explained that the commonable land, which is principally arable, is owned by 25 proprietors. The 745 acres are divided into 1,127 allotments: the maximum containing 6 acres 14 perches; the minimum, 2 perches; and the average of the 1,127 is only 2 roods

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25 perches; the proper cultivation of the land under such circumstances is impossible. Much of the surface requires drainage. The narrow lands, always ploughed or harrowed in one direction, can be neither properly worked or kept clean. The borders of the different allotments form a bed of weeds, which often spread out on each side, and not unfrequently, when neglected, monopolise the whole surface. It is quite certain that if inclosed and thrown into convenient allotments for cultivation, the present produce could be easily increased 50 to 60 per cent., whilst the cost of cultivation would be materially reduced, therefore the inclosure of the commonable lands would be a great benefit to the owners of the land. As has been stated, there are 121 common rights; many of these have been acquired by purchase, as much as 100 *l.* to 130 *l.* having been frequently paid. These purchases were made from time to time under the belief that an inclosure would take place. As the common is, in its present state, comparatively valueless, it follows that a large amount of capital is lying dormant, the interest on which is being lost.

31. Has any previous application for the inclosure or regulation of the lands referred to in this application been made? If so, give the date of such application?	Applications for inclosure made on 7th February 1868 and on 23rd January 1870, and Provisional Order made on 1st December 1870.
32. Name an inn or other convenient place in the parish for holding meetings.	"The Drover's" Inn, Riccall.
33. What is the railway station nearest to the common, and to the proposed place for holding meetings, and what is the distance of such railway station?	Riccall station, within half a mile of common and a quarter of a mile from the inn.
34. Name the places on which it will be necessary to affix notices of public meetings to be held by the Assistant Commissioner, in order to comply with the direction in the 11th section of the Commons Act, 1876, that copies shall be posted on the church door on or near the common, at the post office or post offices, at any town hall or vestry hall, or other building or room, the expense of maintaining which is payable out of any local rate, and at all places in the parish or district where notices are usually posted.	Riccall church-door. Riccall railway-station. Riccall school-room. Riccall post-office.
35. The application must be accompanied by a map on tracing cloth, clearly defining the lands proposed to be inclosed; and by copies of the newspapers containing the advertisement of the intended application; and also, in the case of a suburban common, by proof of service of notice on the urban sanitary authority or authorities.	This will be done.

— 2. —

ASSISTANT COMMISSIONER'S REPORT on Meetings to hear Objections and Evidence on Proposed Inclosure.

Gentlemen, April, 1877.

I HAVE the honour to report that on the 16th day of February, 1877, I held a public meeting at 11 o'clock in the forenoon, at the Drover's Inn, in the parish of Riccall aforesaid, and a second public meeting at the same place at the hour of seven in the evening of the same day for the purpose of hearing all parties desirous of being heard on the subject matter of the application for a Provisional Order for the Inclosure of Riccall Common, the Dam, and the Open Field Lands, situate in the parish of Riccall, in the county of York, whether considered in relation to the benefit of the neighbourhood or to private interests, and for receiving any information or evidence which might be offered in relation thereto.

It was proved that notice of the meetings was posted on the outer door of the parish church of Riccall, on the notice boards of the Wesleyan chapel, and the Primitive Methodist Chapel in the parish of Riccall, and on the external wall of the parish school of Riccall, and in the shop of Durham and Son, in the said parish, on Thursday the 18th day of January last, and that on the 17th January a copy of the notice was given to the postmaster, and this was put in the window of the post-office at Riccall; no notice was actually placed on the common, but the village in which the notices were posted is near the dam part of the lands

lands proposed to be inclosed, and the notices were so posted as to give full notice to parties, and would be more likely to be seen and noticed there than elsewhere.

There were present at the morning meeting, the Rev. J. Farrow, Vicar of Riccall; Mr. J. Leeman, solicitor for Lord Wenlock, and for the Rev. Mr. Farrow, as Trustee of Riccall School common-right owners, and for him as owner of land in the Common Fields, and for Mr. Joseph Mawson Acaster, farmer, owner of land in the Common Fields, and common-right owner; Mr. Coleman, the Estate Agent of Lord Wenlock; Mr. J. P. Wood, solicitor for Mr. William Elston, land valuer, and farmer, Bankhouse, Selby, owner of land in the Common Fields, and also common-right owner; and for Mr. Richard Moon, of Barlby, gentleman, an owner of land in the Common Fields, and also common-right owner, Mr. Elston and Mr. Moon being also both present; Mr. E. Peters, solicitor for the trustees of the Blue Coat School at York, owners of land in the Common Fields; Mr. Weddall, solicitor for Thomas Goulburn Parker, Esq., of Browsholme Hall, near Clitheroe, and for the Rev. James Gibbon Burn-Murdock, of Sevenoaks, Kent, joint devisees in right of their wives, landowners in the Common Fields, and also common-right owners, and also on his own behalf as a common-right owner; Mr. James Pratt, of Riccall, farmer and timber merchant, owner of land in the Common Fields, and also a common-right owner, and also as representing Mr. Josiah Walker, mortgagee, in possession of common-rights; Mr. Joseph Creasen, of Riccall, farmer and miller, owner of land in the Common Fields, and also common-right owner; Mr. Henry Silversides, Riccall, farmer, common-right owner; Mr. John Nicholson, Riccall, gentleman, representing his brother Joseph, common-right owner; Mr. Jonathan Dunn, of Kelfield, the adjoining parish, farmer, President of the Yorkshire Chamber of Agriculture; Mr. Romans, of Riccall, farmer, owner of land in the Common Fields, and common-right owner, and also representing his son, John Romans, also like owner; Mr. George Bradley, of Riccall, farmer and butcher of Barlby, owner of land in the Common Fields, also a tenant of Lord Wenlock, of land in the Common Fields, and of inclosed land; Mr. Robert Blanchard, of Riccall, farmer and hay dealer, tenant of Lord Wenlock, of land in the Common Fields, and of inclosed land, also tenant of and representing Mr. Hotham, owner of land in the Common Fields, and also representing Mrs. Davison, owner of land in the Common Fields; Mr. George Shilleto, of Riccall, farmer, tenant of Lord Wenlock, owner of land in the Common Fields, and of inclosed land; Mr. William Silversides, Riccall, a similar tenant of Lord Wenlock, and Mr. Denham, assistant overseer, of Riccall, and formerly schoolmaster, but now retired.

At the evening meeting, in addition to some of those present at the morning meeting, there were present: George Bradly, Riccall, landowner, tenant of Mr. Townley, owner of land in the Common Fields, and common-right owner; Henry Houfe, Riccall, bricklayer, occupier of a common right; Mr. John Massey, Riccall, gentleman, occupier of common right; George Tait, Riccall, labourer, occupier of common right, and tenant of Lord Wenlock; Mr. John Hawke, Riccall, owner of land in the Common Fields, and occupier of common right; Mr. Thomas Abbott, Riccall, postman, and occupier of land in the Common Fields; Mr. George Longfield, Riccall, miller; Mr. Mark Rennison, occupier of common right, and of land in the Common Fields; Mr. John Romans, owner of land in the Common Fields, and common-right owner; William Smith, labourer, occupier of common right, and a cottage; William Benson, labourer, occupier of common right; Mr. John Stead, farmer, and occupier of common right; Henry Moss, labourer; George Harrison, labourer; William Gott, labourer, and Thomas Tomlinson, labourer.

1. The extent in statute acres of the land proposed to be inclosed, taken from the tithe apportionment award, was 1,351 acres, but this included 54 acres of land described as orchard and garden, and which could not be in any way identified as belonging to the open field lands, but which must be attributed to ancient inclosed lands; and so the quantity must be treated as being 1,297 acres.

2, 3, and 4. The land lies in separate tracts, and is of the description, as follows: Riccall Common, 492 acres, waste of manor, of light sandy soil, though in places wet from the clay under, there being on it heather, ling, gorse, and rough grass; Riccall Dam, 114 acres, pasture, of a fine loamy soil, very fertile, but it is liable to be flooded after rain, and being lower than the River Ouse, there is difficulty of out-let; the West Field, 523 acres, varies from stony land to a light loam, naturally excellent land, but requires draining and good cultivation; the East Field, 113 acres, valuable light loamy soil; the North Field, 16 acres, stronger than the East Field, though much of the same character, but deeper arable land; the Crook Urnell, 19 acres, near the North Field, is of about the same character; King Rudding, 20 acres, adjoining the common, and is a useful light land, good for potatoes.

5. A portion of the West Field and also of the dam abuts upon the River Ouse, which is both a tidal and a navigable river.

6. No minerals are being worked, nor are any supposed to exist; if there be any, the ownership of the minerals is not separate from the ownership of the soil.

7. The Crown is not interested in any part of the land; the River Ouse which touches the land is a tidal and navigable river, but I understand the Crown makes no claim in this respect.

8. Part of the land proposed to be inclosed is waste of a manor. Until the conveyance hereinafter mentioned the common and the dam were waste of manors, part being waste of

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the manor of Riccall-cum-Newbald and Cawthorpe, and part of the manor of Howden; the common rights were held, some of the manor of Riccall, and some of the manor of Howden. Lord Wenlock is the lord of the manor of Riccall; the Ecclesiastical Commissioners are lords of the manor of Howden; but Lord Wenlock has purchased from the Ecclesiastical Commissioners all their estate and interest as lords of the manor of Howden, of and in all and singular the waste lands and commons of the said manor situate and being in the parish of Riccall, and all and singular the copyhold, quit-rents, and manorial fee rents payable out of certain lands therein particularly mentioned. The effect of this purchase is that the Ecclesiastical Commissioners have ceased to have any interest in the lands proposed to be inclosed, and that certain rights in the parish of Riccall, and all rights so far as the inclosure may be affected, have been vested in Lord Wenlock, and the common and the dam are severed from the manor of Howden. Lord Wenlock as lord of the manor of Riccall, and as the owner of all the estate and interest of the Ecclesiastical Commissioners as aforesaid in Riccall, is owner of the soil of the common and the dam, but he is not lord of the manor of Howden, of which manor the Ecclesiastical Commissioners remain lords.

9 and 10. The open field lands are owned by several owners of separate and well-known strips of land, varying in acreage and spread about in disconnected positions, and so as utterly to prevent proper cultivation. There are 121 common rights in respect of certain messuages, or tofts, the sites of ancient messuages, commonly called in the neighbourhood "dead fronts," each common-right being considered as equal. The open field lands are cultivated by the respective owners, or their tenants, but during certain portions of the year—namely, from the 11th October to the 2nd February as regards certain portions of the open fields, and from the 11th October to the 5th November as regards other portions, the portions changing in alternate years—the common-right owners have a right to turn on to the open fields; during the time the open field lands are open to the common-right owners, the owners of lands in the open fields cannot turn on as such, but only as owners or occupiers of common rights. Upon the common and the dam the common-right owners have the right of turning cattle at all times all the year round.

11. No part of the common is situate within the Metropolitan Police District.

12 and 13. The common is situate within six miles of the town of Selby, having a population of 6,193, according to the Census of 1871; the distance from Selby is about five miles; the common is distant about ten miles from York, which has a population of 50,765 in the Parliamentary borough, and 43,796 in the municipal borough; about four miles from the village of Everick, the parish of which has a population of 841; and about seven miles from the village of Wheldrake, the parish of which has a population of 642.

14. The population of the parish of Riccall, according to the Census of 1871, is 795.

15. The occupation of the inhabitants is entirely agricultural.

16. There is no town-green, or village-green, in the parish within which the land proposed to be inclosed is situate, or any ground, other than the common, available for the recreation of the neighbourhood.

17. The inhabitants of the neighbourhood do not resort to the common for the purpose of recreation, nor is any particular part of it used for playing games.

18. As regards an allotment for recreation: the population of the parish is 795, and it is proposed to set out four acres for the purpose; the common is distant about a mile from one end of the village, and a mile and a quarter from the other, and is not convenient; and it is proposed to set out the allotment in the West Field near to the village, and convenient. It is marked upon the sketch hereto annexed as "recreation ground."

19 and 20. There are about 120 cottages, and about one half of them have gardens of less than about 20 perches, or no garden at all. Lord Wenlock lets out at present about 12 acres in garden allotments, mostly of a rood each, and they are all occupied. It is proposed to set out 10 acres for garden allotments for the poor in the open field land, the common being distant from the village, and not so convenient or suitable; in order to suit the convenience of the cottagers, it is proposed to set out six of the acres in the North Field, and four of the acres in the West Field, the situation being convenient for the different parts of the village, and the land being suitable for the purpose. They are shown upon the sketch hereto annexed, and marked "Proposed" allotments.

21. (1.) There are no particular points of view to which it would be desirable free access should be secured.

(2.) There are no particular trees or objects of historical interest to be preserved.

(3.) A recreation-ground is proposed to be set out, and it is not necessary to reserve any special privileges of playing games.

(4.) It is intended that all necessary and convenient roads shall be set out during the inclosure proceedings.

(5.) There is no other specified thing to be done with reference to the benefit of the neighbourhood.

22. Lord

22. Lord Wenlock is the lord of the manor of Riccall, and as such, and as having had conveyed to him all the estate, rights, and interests of the Ecclesiastical Commissioners as lords of the manor of Howden-in-Riccall, as before stated, he is the owner of the soil of the common and the dam; and it has been agreed that he shall receive in lieu of his right of soil one-sixteenth of the common and the dam, exclusive of mines, minerals, and substrata, which he will retain, with right to search for, win, work, and carry away, he paying compensation for surface damage.

23, 24, 25, and 26. There are 21 owners of common rights, and 43 owners of lands in the open fields; of the common-right owners, 12 have signed the application, owning 103 out of 121 common-rights, considered as equal rights; one-third of 121 is 40, and two-thirds are 80, and so more than two-thirds in value assent. Of the owners in the open field lands. 19 have signed the application, owning more than two-thirds of the land; the total rateable value of the open field land is 751 *l.* 10 *s.* 4 *d.*, and one-third of this sum is 250 *l.* 10 *s.* 1 *d.*, and two-thirds are 501 *l.* 0 *s.* 2 *d.*, and so more than two-thirds in rateable value assent. No one has dissented from the application for inclosure.

27. There is no litigation, dispute, or question as to the boundaries of the land proposed to be inclosed, or the mines, minerals, or strata under it.

28. It is anticipated that exchanges will be made.

29 and 30. As regards the advantages anticipated from the inclosure of the common, as opposed to its regulation, and the reason why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood, and in relation to private interests, evidence and information was given to the following effect: That as regards the common, from the nature of the soil, it is unsuitable for pasture, and whatever expenditure might be laid out upon it for pasture only it would not be profitable, and though there would be improvement it would not pay for the expense and labour; that though not suitable as grass land, it is capable of being made good arable land, and that when marled and drained, and properly farmed and cultivated, it would be worth 30 *s.* to 40 *s.* an acre rent; that the adjoining land, though uninclosed and not properly cultivated, will fetch that, and is easily purchased when it comes into the market; as regards the dam, though it could be stinted, yet it would probably not produce so much as if it were inclosed, when it would be better manured; and that the common and the dam are not necessary for the recreation of the neighbourhood, and that it is desirable they should be inclosed, when they would be more productive, and the neighbourhood would gain the advantage; that as regards the open fields, they would be much better cultivated; the estimated increased annual produce of the land, if inclosed, would be—

	£.
The common - - - - - - - - - -	3,344
The commonable land - - - - - - - - -	2,235
The pasture land - - - - - - - - - -	342
£.	5,921

making a total of increased value of 5,921 *l.* To get this increase of produce more labour would be employed, but not perhaps very great, as labour would be economised; but it was estimated that from fifteen to twenty additional families would be employed; that probably an outlay of about 15,000 *l.* would be necessary to inclose, drain, make roads, &c., and nearly all this would be expended in labour which would be advantageous. The rateable value of the property would be increased, and the common would be entirely an increase to the rateable property, as it is not at present rated; that poaching would be put an end to, and rabbits destroyed which at present injure the crops; that allotments would be set out for recreation, and for field-gardens for the poor near the village, and suitable; that more and better roads would be made; that the open field lands cannot now be properly cultivated, owing to being cut up into so many divided ownerships; that there would be less chance of infectious diseases being communicated to stock, as it often happens that persons having right of common purchase stock at markets near, and put them on the common; that if inclosed it would be cultivated as arable principally, and especially the common, but the dam would remain pasture, as it is subject to floods; that the lord of the manor, and indeed the parties generally, do not think it worth while to regulate the common, and it would be throwing money away; and though it might be improved a little it would be very little, and that if regulated only it would not pay for the expense of money laid out for improvement, and there would be no advantage in regulating the dam only and inclosing the rest. Mr. Dunn, of the adjoining parish of Kelfield, and President of the Yorkshire Chamber of Agriculture, concurred in the above views, and especially considered that the common should be cultivated as arable; and he did not think that it would pay the expense of draining and levelling, if it were to be grass only, but, though at considerable expense, it would be made very fair arable land; and he instanced the case of Barlby Common, which abuts on Riccall Common, and which was inclosed some years ago, and is now fair arable land, and it was of similar character to Riccall Common. As to the open field lands, he considered the estimate before mentioned, as to the increased produce, should there be inclosure, a very fair one. He had known the

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parish for 30 or 40 years, and though it had some of the best land in the neighbourhood, yet, owing to the want of inclosure, it was the worst farmed. He considered that the nation would gain by making land profitable which at present is not profitable; and as a member of the Board of Guardians of the Selby Union, within which Riccall parish is, he considered it would be a great advantage to the neighbourhood to have the land brought into the best state of cultivation, and to have it brought to its best rateable value; that there would be advantage to the neighbourhood in more and better roads being set out, the present roads being in some cases very bad, as in the case of the roads across the common to Skipwith and Duffield; that it would be a great advantage to the village of Riccall that the allotments for recreation and for field-gardens for the poor should be set out as proposed, the situations being convenient, and the land for gardens suitable; and that the money which would be spent in inclosing and in cultivation would be advantageous to the neighbourhood, as it would be mostly spent in labour. These views were entirely concurred in by the meeting, and it was also considered that inclosure would improve the tone and character of the village.

31. Applications for inclosure were made in 1868 and 1870, and a Provisional Order was issued under the last application.

32. The "Drovers' Inn" is convenient in the parish for holding meetings.

33. Riccall railway-station is about half a mile from the common, and a quarter of a mile from the inn.

34. Convenient places for affixing notices are the church-door, the school-room, and the post-office. Notices are not usually posted at the railway-station.

35. Notice of the application was served on the Urban Sanitary Authority on the 28th of November last, by letter addressed by Messrs. Leeman & Co. to the clerk of the said authority at Selby, and receipt was acknowledged by the said clerk, with the duplicate service endorsed, on the 29th of November. Mr. Weddall said he was present at a meeting of the Local Board at Selby when the matter was discussed, but no formal resolution was passed, it being considered a matter in which the Board would not interfere. Selby, situate about five miles distant, is separated from the common by the tidal navigable River Ouse, the only access by road being over a toll-bridge held by a private company.

I inspected the land proposed to be inclosed, and annex hereto a sketch thereof.

I report in favour of the expediency of the inclosure, regarded both in relation to the benefit of the neighbourhood, and to private interests. As regards the common, no advantage is derived from it as a place of recreation, and but little as pasture; and as regards the open fields, the greatest disadvantage is suffered, both to public and private interests, from meagre and inadequate cultivation, owing to the many divided ownerships of strips of land, in disconnected positions, quite preventing proper farming. But with inclosure would come improved and due cultivation, and increased value of land, and increased expenditure of money in the neighbourhood, and increased employment of labour, and the improvement of roads, and a better tone and character to the parish, which would then be enabled to develope its great natural advantages. Without inclosure the parish, if it did not degenerate, would at least stand still, but with inclosure it must improve; and there would also be a special and direct gain to the neighbourhood, from the setting out allotments for recreation and for field-gardens for the labouring poor in situations both convenient and suitable.

The file of papers is forwarded herewith.

I have, &c.

The Inclosure Commissioners for England and Wales.

(signed) *Charles Wood.*

— 3. —

PROVISIONAL ORDER for the INCLOSURE of a COMMON.

WHEREAS persons interested in certain lands called or known as Riccall Common, Riccall Dam, and The Open Fields, situate in the parish of Riccall, in the county of York, such lands being a common within the meaning of "The Inclosure Acts, 1845 to 1876," have made application to the Inclosure Commissioners for England and Wales to issue a Provisional Order for the inclosure of such common, and to certify that it is expedient that such Provisional Order should be confirmed by Parliament:

And whereas it has been made to appear to the said Commissioners that the persons making the said application represent at least one-third in value of such interests in the said common as are proposed to be affected by the Provisional Order:

And

And whereas the said Commissioners, having taken the said application into consideration, were satisfied that a *primâ facie* case had been made out, and that, regard being had to the benefit of the neighbourhood as well as to private interests, it was expedient to proceed further in the matter, and accordingly ordered a local inquiry to be held by an Assistant Inclosure Commissioner:

And whereas the said Assistant Commissioner, having inspected the said common, and having caused public notice to be given as required by the said Acts, held, pursuant to the said notice, public meetings on the 16th day of February 1877, at eleven o'clock in the forenoon and at seven o'clock in the evening, at the "Drovers" Inn, in the said parish, to hear all persons desirous of being heard on the subject-matter of the said application, and any information or evidence which might be offered in relation thereto, and inquired into the correctness of the statements in the said application, and otherwise into the expediency of making the Provisional Order applied for, and into the nature of the provisions to be inserted in such Provisional Order:

And whereas the said Assistant Commissioner duly reported in writing to the said Commissioners the result of the local inquiry and of the public meetings held by him, together with the information obtained by him as to the several particulars in the said application, and all other information required by the said Acts, and annexed to his report a map of the said common, a copy of which map is hereto annexed:

And whereas the Right Honourable Beilby Richard Baron Wenlock, as lord of the manor of Riccall, and as owner of all the estate and interest formerly held by the Ecclesiastical Commissioners for England as lords of the manor of Howden in all and singular the waste lands and commons of such manor situate in the parish of Riccall, is entitled to the soil of the said Riccall Common and Riccall Dam:

Now, therefore, in pursuance of the powers given to us by the said Acts, we, the Inclosure Commissioners for England and Wales, being satisfied that, having regard to the benefit of the neighbourhood as well as to private interests, the inclosure of the said common is desirable, have framed, for the consideration of the persons interested, this our Draft Provisional Order, specifying the terms and conditions on which, provided the necessary consents are given thereto, we are prepared to certify that it is expedient the Provisional Order should be confirmed by Parliament, that is to say—

That four acres in West Field, at or near the spot marked X on the map hereto annexed, be allotted for recreation-ground.

That six acres in North Field, at or near the spot marked Y on the said map, and four acres in West Field, at or near the spot marked Z on the said map, be allotted for field-gardens.

That carriage-roads, bridle-roads, and foot-paths be set out, under the direction of the Inclosure Commissioners, as may be found most commodious.

That one-sixteenth part in value of the said Riccall Common and Riccall Dam be allotted, under the provisions of the said Acts, to the said Beilby Richard Baron Wenlock, as lord of the said manor of Riccall, and as owner of the estate and interest formerly held by the Ecclesiastical Commissioners as aforesaid, in lieu of his right and interest in the soil of the said lands, exclusively of his right and interest in all mines, minerals, stone, and other substrata under the same, and also exclusively of any right of pasturage or other right of common, or interest in the nature of a right of common, which may have been usually enjoyed by the said Beilby Richard Baron Wenlock, or his tenants, upon the land to be inclosed, which said right of pasturage or other right, if any, is to be compensated by allotments or otherwise, independently of the allotment hereby stipulated, in respect of his right and interest in the soil.

And in respect of the mines, minerals, stone, and other substrata under the said Riccall Common and Riccall Dam, which are hereby excepted from the inclosure, and reserved to the said Beilby Richard Baron Wenlock, it is hereby specified as follows, that is to say:—

That a right to enter the said lands when inclosed, for the purpose of opening, working, or winning such mines, minerals, stone, and other substrata be reserved to the said Beilby Richard Baron Wenlock, compensation to be made by the persons exercising such right for any damage to the surface which may thereby be done.

In witness whereof we have hereunto set our official seal this twenty-third day of April, One thousand Eight hundred and Seventy-seven.

L.S.

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— 4. —

CONSENTS.

We, the Undersigned, being persons interested in certain lands called or known as Riccall Common, Riccall Dam, and The Open Fields, situate in the parish of Riccall, in the county of York, whose interests will be affected by the draft Provisional Order for the inclosure of the said lands, framed by the Inclosure Commissioners for England and Wales, and dated the 23rd day of April in the year of Our Lord 1877, do hereby signify our consent to such draft Provisional Order.

Witness our hands,

(signed) *Wenlock*, Lord of the Manor.
J. R. Farrow, Vicar of Riccall.
George Swinbank.

Signed by Lord Wenlock, J. R. Farrow, and George Swinbank in the presence of
J. J. Leeman,
Solicitor, York.

(signed) *Jas. Pratt.*
Thos. Bulmer.
John Hawkins.
John Silversides.
Elizabeth Swinbank.
Joseph Creaser.
Wm. Camplejohn.
Thos. Pickard.
Wm. Camplejohn (for *Byelawmen*).
Thos. Romans.
John Romans.
John Romans (pro *F. H. Romans*).

Signed by James Pratt, Thos. Bulmer, John Hawkins, John Silversides, Elizabeth Swinbank, Joseph Creaser, Wm. Camplejohn, Thos. Pickard, Wm. Camplejohn (for Byelawmen), Thomas Romans, John Romans, and John Romans (for F. H. Romans), in the presence of
John Coleman,
Land Agent, Riccall.

(signed) *George Bradley*, Overseer.
Ditto (for *Joseph Walker Belby*).

Signed by *George Bradley* in the presence of
Margaret Burnett.

(signed) *Warrington* and others (by *Geo. Cordukes*).

Signed by *G. Cordukes* in the presence of
Jno. Coleman.

(signed) *James Creaser.*

Signed by *James Creaser* in the presence of
Jno. Coleman.

(signed) *William Elston.*
Rd. Moon.
Thos. Goulburne Parker and
James McGibbon Burn Murdock
(by their Agents, Weddall and Parker).
Thos. M. Weddall.
Joseph Nicholson.
John Nicholson.
Henry Silversides.
William Silversides.

Signed by the said William Elston, Richard Moon, Messieurs Weddall and Parker, Thomas Motley Weddall, Joseph Nicholson, John Nicholson, Henry Silversides, and William Silversides, in the presence of
Fred. Arey,
Clerk to Messrs. Leeman & Co.,
Solicitors, York.

Appendix, No. 3.

INFORMATION AND DIRECTIONS as to the mode in which Applications for the Regulation or Inclosure of Commons, under the Inclosure Acts, 1845 to 1876, are to be made to the Inclosure Commissioners; with Explanations respecting the Law relating to the Regulation and Inclosure of Commons.

Appendix, No. 3.
References to the Commons Act, 1876:

Sect. 2.

1. APPLICATION may be made to the Inclosure Commissioners for England and Wales for a Provisional Order:

(1.) For the regulation of a common; or

(2.) For the inclosure of a common; or

(3.) For the regulation of a part of a common, and the inclosure of the remainder; but in this case the application must be dealt with as if the respective parts were separate commons.

Sect. 2.

2. The persons making the application must represent at least one-third in value of the interests which are proposed to be affected by the Provisional Order.

Sect. 8.

If a common is situate wholly or partly in any town, or within six miles of any town, the urban sanitary authority may, with the consent of persons representing one-third in value of the interests proposed to be affected, make application for the regulation of such common, with a view to the benefit of their town.

Sect. 3.

3. A Provisional Order for the regulation of a common may provide, generally or otherwise, for the "adjustment of rights" in respect of such common, and for the "improvement" of such common, or for either of such purposes.

Sect. 4.

The adjustment of rights in respect of a common comprises all or any of the following things:—

(1.) As respects rights of common of pasture in a common, being waste land of a manor, the determination of the persons by whom, the stock by which, and the times at which such common of pasture is to be exercised.

(2.) As respects rights of common of turbery, or taking of estovers, or taking gravel, stone, or otherwise interfering with the soil of the common, being waste land of a manor—the determination of the persons by whom, and the mode and place or places in which, and the times at which such rights are to be exercised; also, on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money—the restriction, modification, or abolition of all or any of such rights which may permanently injure the common.

(3.) As respects rights of common in land which is not waste land of a manor,—the stinting or other determination of such rights, and the persons by whom, and the mode in which, and the times at which such rights are to be exercised; as also, on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights which may be injurious to the general body of the commoners or to the proper cultivation of the land.

(4.) As respects any common, whether it is or is not waste land of a manor,—the determination of the rights and obligations of the lord of the manor, severalty owners, or other person or persons entitled to the soil of such common; as also, on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights; and in particular, in the case of severalty owners, of all or any of such rights which may be injurious to the general body of the severalty owners or to the proper cultivation of the land.

(5.) Generally as respects any common, whether it is or is not waste land of a manor,—the determination of any rights and settlement of any disputes relating to boundaries, rights in the soil or in the produce of the soil, or otherwise, whether arising between the commoners themselves, or between the commoners in relation to the lords of the manors, severalty owners or other person or persons entitled to the soil of the common, which settlement may be conducive to the interests of all or any class of persons interested in the common.

Sect. 5.

The improvement of a common comprises all or any of the following things; that is to say,—

(1.) The draining, manuring, or levelling the common.

Appendix, No. 3.

(2.) The planting trees on parts of such common, or in any other way improving or adding to the beauty of the common.

(3.) The making, or causing to be made, bye-laws and regulations for the prevention of or protection from nuisances, or for keeping order on the common.

(4.) The general management of such common.

(5.) The appointment from time to time of conservators of the common for the purposes aforesaid.

Sect. 6. Sect. 10, Sub-Sect. 4.

4. A Provisional Order may be issued for the inclosure of a common in accordance with the provisions of the Inclosure Acts, 1845 to 1876; but the Commons Act, 1876, requires that special information shall be furnished to the Inclosure Commissioners as to the advantages the applicants anticipate from the inclosure of the common as compared with its regulation, and also as to the reasons why an inclosure is expedient, when viewed in relation to the benefit of the neighbourhood.

Sect. 7.

5. In any Provisional Order, such of the following terms and conditions for the benefit of the neighbourhood as are applicable to each case are required by the Commons Act, 1876, to be inserted :—

(1.) That free access is to be secured to any particular points of view.

(2.) That particular trees or objects of historical interest are to be preserved.

(3.) That there is to be reserved, where a recreation ground is not set out, a privilege of playing games, or of enjoying other species of recreation, at such times and in such manner and on such parts of the common as may be thought suitable, care being taken to cause the least possible injury to the persons interested in the common.

(4.) That carriage roads, bridle paths, and foot-paths over such common are to be set out in such directions as may appear most commodious.

(5.) That any other specified thing is to be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.

Sect. 10. Sub-Sect. 1.

6. Before an application is made to the Inclosure Commissioners, the applicants must, in every case, publish, in the form approved by the Commissioners, an advertisement in the newspaper or newspapers having the largest circulation in the neighbourhood of the common, giving notice of their intention to apply to the Commissioners for a Provisional Order. In ordinary cases two insertions will be sufficient, with an interval of a week between each.

Sect. 8.

7. In the case of a suburban common, that is to say, any common which is situate either wholly or partly in any town or towns, or within six miles of any town or towns, notice of the intended application must be served on the urban sanitary authority or authorities. A "town" means any municipal borough, or Improvement Act district, or local government district, having a population of not less than 5,000 inhabitants. The population is to be reckoned according to the last published census, and the distance is to be measured in a direct line from the town hall, or if there shall be no town hall, then from the cathedral or church, if there be only one church, or if there be more churches than one, then from the principal market place of such town to the nearest point of the suburban common.

Sect. 10.

8. The application must be on a form supplied by the Commissioners, and be accompanied by a map on tracing cloth, clearly defining the lands proposed to be dealt with; also by copies of the newspapers containing the advertisement of the intended application, and, in the case of a suburban common, proof of service of notice on the sanitary authority or authorities.

9. When forms of application are applied for, it should be stated whether they are required for "regulation" or for "inclosure," or partly for one and partly for the other.

Sect. 2.

10. In case of an application partly for regulation and partly for inclosure, both forms must be filled up and signed, and the boundaries between the respective parts must be set out on the map.

Sect. 2.

11. The application must be signed by persons representing at least one-third in value of such interests in the common as are proposed to be affected by the Provisional Order.

Sect. 10, Sub-Sect. 6.

12. On receipt of an application, accompanied by the before-mentioned documents, together with a deposit on account of the expenses which may be incurred, of such sum as the Commissioners in each case may require, the Commissioners will take the matter into consideration, and if satisfied that a *primâ facie* case has been made out, and that, regard being had to the benefit of the neighbourhood, as well as to private interests, it is expedient to proceed further, they will order a local inquiry to be held by an Assistant Commissioner.

13. The

13. The Assistant Commissioner will inspect the common, and, after not less than 21 days' notice, published as directed by the Commons Act, 1876, will convene one or more public meetings in the locality, one at least of which will be held in the evening, between the hours of seven and 10 o'clock, for the purpose of hearing all persons desirous of being heard in relation to the subject matter of the inquiry, and of making such other inquiries, and gaining such information as may enable him to report fully to the Commissioners thereon. Appendix, No. 3. Sect. 11.

14. After considering the Assistant Commissioner's report, the Commissioners, if satisfied that the regulation or inclosure is expedient, will frame a draft Provisional Order, setting forth the provisions to be made for the benefit of the neighbourhood, and for the protection of private interests, and will deposit a copy of the same in the parish for the consideration of the parties interested, and will give public notice of such deposit. Sect. 12.

15. If the consents required by the Act, that is to say, of persons representing at least two-thirds in value of such interests in the common as will be affected by the Provisional Order, and of the Lord of the Manor in case of land waste of any manor, or to the soil of which the lord is entitled, are given to the draft Provisional Order as originally deposited, and to any modifications thereof, the Provisional Order will be deemed to be final, and the Commissioners will certify that it is expedient that such Order should be confirmed by Parliament. Sect. 12, Sub-Sect. 5.

16. When the freemen, burgesses, or inhabitant householders of any city, borough, or town are entitled to rights of common, or other interest in the common, the consent of two-thirds in number of such freemen and burgesses, so entitled, as may be resident in such city, borough, or town, or within seven miles thereof, or of such inhabitant householders, must be given to the Provisional Order. Sect. 12, Sub-Sect. 6.

17. If the report of the Inclosure Commissioners is referred to a Committee of either House of Parliament for consideration, and any modifications are recommended, the Inclosure Commissioners may modify the Provisional Order accordingly, and if such modifications are consented to in the same manner as the Provisional Order originally deposited, the Commissioners will make a special report to that effect. Sect. 12, Sub-Sect. 11.

18. After the Bill confirming the Provisional Order has received the Royal Assent, the Commissioners will convene a meeting of the parties interested, for the purpose of appointing a valuer to proceed with and carry out the regulation or inclosure of the common, and of resolving upon instructions to the valuer not inconsistent with the terms of the Provisional Order. But no appointment of a valuer will be valid until it has been confirmed by the Commissioners. Sect. 32.

19. The regulation, or inclosure, will then proceed as directed by the Inclosure Acts, 1845 to 1876.

20. The Inclosure Acts, 1845 to 1876, are as follows:—

Year and Chapter.	Short Title.
8 & 9 Vict. c. 118 - - - -	The Inclosure Act, 1845.
9 & 10 Vict. c. 70 - - - -	The Inclosure Act, 1846.
10 & 11 Vict. c. 111 - - - -	The Inclosure Act, 1847.
11 & 12 Vict. c. 99 - - - -	The Inclosure Act, 1848.
12 & 13 Vict. c. 83 - - - -	The Inclosure Act, 1849.
14 & 15 Vict. c. 53 - - - -	The Inclosure Commissioners Act, 1851.
15 & 16 Vict. c. 79 - - - -	The Inclosure Act, 1852.
17 & 18 Vict. c. 97 - - - -	The Inclosure Act, 1854.
20 & 21 Vict. c. 31 - - - -	The Inclosure Act, 1857.
22 & 23 Vict. c. 43 - - - -	The Inclosure Act, 1859.
31 & 32 Vict. c. 89 - - - -	The Inclosure, &c., Expenses Act, 1868.
39 & 40 Vict. c. 56 - - - -	The Commons Act, 1876.

Appendix, No. 3.

Form of Advertisement.

_____ Common.

Notice is hereby given, that application is about to be made to the Inclosure Commissioners for England and Wales, under the provisions of the Inclosure Acts, 1845 to 1876, for a Provisional Order for the*
of
Common, situate in the parish of
in the county of

Dated this day of 18 .

(Signature of Agent.)

* Here state whether the application is for the "regulation" or for the "inclosure" of the common, or for the regulation of part and the inclosure of the remainder.

I N D E X.

[*N.B.*—In this Index the *Figures* following the Names of the Witnesses, and those in the Analysis of Evidence, refer to the Questions in the Evidence; the *Figures* following *App.* refer to the Pages in the Appendix; and the *Numerals* following *Rep.* to the Pages in the Report.]

A.

ADVERTISEMENT (NOTICE OF APPLICATION). Form of Advertisement giving notice of application for the regulation or inclosure of any common, *App.* 116.

Agriculture. Advantage of inclosure in each of the four cases now under consideration as the best means of developing the capabilities of the soil, *Caird* 97-101——Importance generally of inclosure (as compared with regulation) in causing increased production, *ib.* 147. 209.

Capability of much agricultural improvement in the case of the waste of the manor of Barrowden, if inclosed, *Wood* 475-478——Result of witness' inquiry that he found the commonable lands of the different owners in Barrowden and Luffenham very much intermixed and very inconvenient to cultivate, *ib.* 530-537——Total amount of grass land in each of the proposed inclosures, *ib.* 578——Obstacle to satisfactory agriculture through the sub-division of land under one occupier and through the common rights attached, *ib.* 585-588. 594-598.

Probable rental value of not more than 2*s.* 6*d.* an acre in the case of the waste in Barrowden and South Luffenham; great increase by the outlay of capital, *Martin* 843-852. 940-947——Obstacle to proper agriculture in Riccall through the present sub-division of the land, *Dunn* 1307.

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Applications for Regulations or Inclosure. Separate forms of application for regulation and for inclosure, *Caird* 97——Explanation of the grounds upon which the Inclosure Commissioners have withheld for the present certain applications for inclosure, *ib.* 103, 104. 321-323——Great care exercised by the Commissioners in framing the questions to applicants; readiness of the Commissioners to supply any omission in the questions relating to the "protection of any public interests," *ib.* 286-289.

Inquiry made by witness at the meetings whether any persons had declined to sign the application, *Wood* 411——Belief that the promoters of the inclosures have not been actuated mainly by gain, *ib.* 575, 576.

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Informations and directions as to the mode in which applications for the regulation or inclosure of commons under the Inclosure Acts, 1845 to 1876, are to be made to the Inclosure Commissioners, *App.* 113-115.

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B.

Barlby Inclosure. Beneficial effect of the inclosure of Barlby near Riccall, which took place some fifteen years ago, *Coleman* 1140, 1141. 1144. 1146——Excellent agricultural results from the former inclosure of Barlby Common, which adjoins Riccall; similar benefit anticipated from the inclosure of the latter common, *Dunn* 1312-1322——Much smaller acreage of Barlby than of Riccall, *ib.* 1377-1380.

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BARROWDEN (RUTLAND):

1. *Local Inquiry and Local Feeling upon the Question of Inclosure; Application on the Subject.*
2. *Advantage of Inclosure as a Means of securing improved Agriculture.*
3. *Provision proposed to be made for Field Gardens and Recreation Ground.*
4. *Common Rights; Compensation to be given.*
5. *Right of Shooting and Fishing.*
6. *Official Report by the Assistant Inclosure Commissioner recommending Inclosure.*
7. *Draft Provisional Order.*
8. *Consents.*
9. *Stipulation by the Committee for an increase of Recreation Ground.*

1. *Local Inquiry and Local Feeling upon the Question of Inclosure; Application on the Subject:*

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2. *Advantage of Inclosure as a Means of securing improved Agriculture:*

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2. *Advantage of Inclosure as a Means of improved Agriculture*—continued.

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5. *Right of Shooting and Fishing*:

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BARROWDEN (*RUTLAND*)—continued.

5. *Right of Shooting and Fishing*—continued.

common land and waste, and as likely to be affected if inclosure be carried out; dispute between the two chief owners as to the right of shooting, *Thompson* 1058–1069. 1104–1115.

6. *Official Report by the Assistant Inclosure Commissioner recommending Inclosure:*

Report by Mr. Wood, dated April 1877, in explanation of the proceedings at the local inquiry meetings, and containing information in detail upon various points; conclusion in favour of the proposed inclosure, *App.* 76–79.

7. *Draft Provisional Order:*

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8. *Consents:*

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9. *Stipulation by the Committee for an increase of Recreation Ground:*

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C.

Caird, James. (Analysis of his Evidence.)—Strict compliance of the Inclosure Commissioners with the provisions of the Commons Act of 1876 in carrying out the proceedings in reference to certain inclosures reported upon to Parliament in the present Session, 1, 2 ——Anxiety of the Commissioners to ascertain the views of the present Committee upon any points that might arise in these cases under the new Act; facility given at the same time to any local opposition before the Committee, 3, 4——Full information given in the report to Parliament as to the reasons for adopting a system of division in severalty, instead of proceeding by means of regulation, 5.

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N.

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Examination as to the acreage and rental of North Luffenham parish, and as to the letting value, respectively, of the inclosed land, and of the land proposed to be dealt with by inclosure; estimate of 23 *s.* 6 *d.* per acre as the rateable value of 1823 acres out of 1,862, *Caird* 6–8. 13–27. 31–37. 54–63——Belief that a certain paper setting forth the acreage and rental of North Luffenham parish includes the old inclosures as well as the lands now proposed to be dealt with, *Ridley* 9. 11——Large proportionate rental represented by some forty acres, which comprise railway property, a brickyard, &c., *Caird* 10. 32–34. 54.

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Promotion of the Provisional Order in this case chiefly by Lord Aveland and Lord Exeter, *Caird* 38, 39——Reference to Lord Aveland's tenure of a large portion of the property as being subject to common grazing rights, *ib.* 40–42. 64.

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North Luffenham (*Rutland*)—continued.

Circumstance of the meetings for North and South Luffenham having both been held in the former parish, having succeeded each other, and having been attended for the most part by the same persons, *Wood* 329-342—— Attendance chiefly of solicitors and others from a distance, very few of those locally interested having been present, *ib.* 336. 340-348——Movement in North Luffenham in 1871 in favour of the appropriation of allotments for exercise and recreation; various convenient allotments since set out, *ib.* 407-410.

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O.

Owners and Occupiers. Conclusion as to the owners in fee and those occupying under them being for the most part favourable to inclosure instead of regulation, *Caird*, 50. 52, 53——*See* also *Local Inquiry.*

P.

Parliamentary Inquiry. Anxiety of the Inclosure Commissioners to ascertain the views of the present Committee upon any points that might arise in these cases under the new Act; facility given at the same time to any local opposition before the Committee, *Caird* 3, 4——Summary of the steps taken by the Commissioners in reporting to Parliament, and in facilitating the hearing of objections before the special committee appointed to consider the report, *ib.* 97——Opportunity given to dissentients to state their objections directly to the Select Committee of the House, *ib.* 311, 312.

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Public Interest. Belief as to the "health, comfort, and convenience" of the inhabitants having been duly consulted in the provision made for recreation ground and field gardens in the several cases now under consideration, *Wood* 622-630.

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R.

Rateable Value. Advantage to the public by the increase of rateable value through the reclamation of good waste land as a consequence of inclosure, *Caird* 149——Calculation as to the increase of rateable value in Riccall consequent upon an inclosure of the commonable lands; injustice at present to the rest of the union, *Dunn* 1329-1333.

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Recreation Grounds. Conclusion that four acres are sufficient as a recreation ground for each parish, the population not being large; very fair cricket ground thus provided, *Wood* 513–522——Instructions received by witness from the Inclosure Commissioners before conducting his local inquiries and reporting as to the amount of recreation ground; special attention directed to be paid to this point, *ib.* 579–584. 589–593——Difficulty in setting out recreation grounds large enough not only for cricket but for the game of knurr and spell, *ib.* 599–603.

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See also *Barrowden*, 3. 9. *North Luffenham. Riccall*, 5. 10. *South Luffenham.*

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See also *Barrowden*, 1, 2. *Inclosure. North Luffenham. Riccall*, 1, 2.

Riccall (York):

1. *Local Inquiry and Local Feeling upon the Question of Inclosure or Regulation; Application made for Inclosure.*
2. *Importance of Inclosure rather than Regulation with a view to improved Cultivation.*
3. *Area proposed to be inclosed, and Cost involved.*
4. *Rights of Pasture, &c.*
5. *Field Gardens.*
6. *Recreation Ground.*
7. *Official Report by Assistant Inclosure Commissioner.*
8. *Draft Provisional Order.*
9. *Consents.*
10. *Stipulation by the Committee for an Increase of Recreation Ground and Garden Allotments.*

1. *Local Inquiry and Local Feeling upon the Question of Inclosure or Regulation; Application made for Inclosure:*

Character of the evidence before the Riccall meeting, upon which witness concluded that regulations was not applicable, *Wood* 657–661——Larger attendance at the meeting in the

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RICCALL (*YORK*)—continued.

1. *Local Inquiry and Local Feeling upon the Question of Inclosure, &c.*—continued.

Riccall case than in the other cases, the interests in the former having been larger than in the latter, *Wood* 670–672.

Statement purporting to show that the policy of inclosure was agitated and understood throughout the whole of the parish; the question has, in fact, been well ventilated for many years past, *Coleman* 1135–1139——Presence of several labouring men at the evening meeting held by the Assistant Commissioner; unanimity of the meeting in favour of inclosure, with the exception of one person who was neutral, *ib.* 1137. 1142, 1143——Explanation as to Lord Wenlock having for some years resisted the pressure for inclosure, *ib.* 1138, 1139. 1150, 1151.

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Full opportunity given by the Assistant Commissioner at the meetings in Riccall for the hearing of objections to the scheme of inclosure, *Dunn* 1304, 1305——Universal feeling of the locality in favour of inclosure, *ib.* 1339–1341.

Application to the Inclosure Commissioners for a Provisional Order for the inclosure of the common, *App.* 102.

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2. *Importance of Inclosure rather than Regulation with a view to improved Cultivation:*

Great improvement to be effected in Riccall, though the reclamation will be costly, *Caird* 98——Power of the present Committee to treat as separate schemes the proposed inclosure of common fields and the proposed inclosure of waste of the manor, and to approve the former only, *ib.* 221–224——Admission that regulation might be applied to the open common; far greater benefit by inclosure, *ib.* 305–310——Inadequacy of regulation in the case of Riccall Common, *Wood* 651. 656.

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Benefit to the poorer inhabitants as well as to the larger owners, by means of inclosure, *Coleman* 1192–1194——Estimate of about 7,450 *l.* as the cost of inclosing the common fields, *ib.* 1235–1238——Further statement as to the increased value to be given to the land by means of inclosure in return for the capital invested, and as to the inadequacy of regulation on this score, *ib.* 1239–1252. 1288–1290.

Belief that the proposed inclosure would benefit the whole parish, *Dunn* 1306——Largely increased value of the land if inclosed, *ib.* 1308, 1309. 1312–1322. 1332, 1333——Excellence of the soil of a large portion of the commonable lands, whereas they cannot now be properly farmed, *ib.* 1327, 1328——Remunerative result of an inclosure of the commonable lands, irrespectively of inclosure of the waste of the manor, *ib.* 1354–1356.

3. *Area proposed to be Inclosed, and Cost involved:*

Reference to the case of Riccall as comprising 691 acres of open arable fields, and 606 acres of waste of a manor; justification of inclosure in this case, *Caird* 98——Larger extent of waste of manor in Riccall than in the other cases now under consideration, *ib.* 298–300——Large outlay necessary upon the common, *Wood* 560, 561.

Total of 606 acres comprised in the waste of Riccall, of which 114 acres known as the Dam are pasture land of a valuable character, but liable to be flooded, *Coleman* 1120——Total of about 1,300 acres to be inclosed, the cost being estimated at 15,000 *l.*, *ib.* 1124. 1134. 1235, 1236——Total of 2,666 acres in Riccall, of which about one-half is waste and commonable land, *ib.* 1205.

4. *Rights*

RICCALL (*YORK*)—continued.

4. *Rights of Pasture, &c:*

Particulars in connection with the Dam pasture in Riccall; right of turning out so many cattle upon it, *Wood* 562–569——Possession of rights of stray and pasture solely by the owners or tenants of common rights, *Coleman* 1120——Great sub-division of the commonable lands, there being 745 acres and about forty-five proprietors, and successful cultivation being impracticable, *ib.* 1126, 1127. 1130. 1131.

Examination with further reference to the rights of common or pasture over the lands proposed to be inclosed, witness further submitting that regulation is not so desirable as inclosure, *Coleman* 1167–1194. 1235–1261——Opportunity of the commoners for keeping geese and poultry upon the land allotted to them in severalty, *ib.* 1206–1209.

Excessive number of sheep and cattle turned out upon Riccall dam, these frequently straying on to witness' land, so that his sheep are under constant risk of infection, *Dunn*, 1323–1326. 1342–1351.

5. *Field Gardens:*

Statement in justification also of the allotment of only ten acres for field gardens, twelve acres being already provided by a landowner for this purpose, *Caird* 208–214——Prospect of some increase of population as a result of inclosure; prospect on the other hand of an increase of field gardens by re-investment of any surplus rents from the ten acres now reserved, *ib.* 215–220.

Reservation of only ten acres out of 606 acres of waste in Riccall, witness having made allowance for twelve acres already reserved voluntarily by a landowner, though the latter cannot be depended upon as a permanent arrangement, *Wood* 508–512——Good land proposed to be given for cottage allotments; conclusion as to the sufficiency of ten acres for the purpose, in addition to the allotments voluntarily provided by the lord of the manor, *ib.* 559. 570–574.

Belief as to the sufficiency of ten acres of allotment gardens; explanation hereon in regard to twelve acres being already devoted to this purpose by Lord Wenlock, *Coleman* 1154–1157. 1163–1166. 1212–1216. 1279–1287——Slight increase likely to be made to the labouring population by inclosure, *ib.* 1156, 1157. 1276–1278.

Examination with further reference to the allotment gardens already provided by Lord Wenlock and the additional allotments under the proposed inclosure; belief further expressed as to the adequacy of the provision on this score, *Coleman* 1262–1270. 1279–1287.

Very convenient situation and valuable character of the ten acres of land to be devoted to allotment gardens; sufficiency of this amount, twelve acres being already provided by Lord Wenlock, *Dunn* 1334. 1352, 1353.

6. *Recreation Ground:*

Area of more than 600 acres to be inclosed in Riccall, witness submitting, however, that four acres are a sufficient reserve for recreation, *Caird* 206, 207——Question considered whether the larger waste in the case of Riccall should not have called for a larger recreation allotment than four acres; dissent from this view, *Wood* 673–679.

Particulars in connection with the selection of four acres as recreation ground; this is amply sufficient for cricket and all other recreation purposes, *Coleman* 1158–1161. 1195–1204. 1210, 1211. 1291——Estimate of 100 *l.* per acre as the value of the land to be devoted to recreation purposes, *ib.* 1275.

Conclusion as to the entire sufficiency of a recreation ground of four acres in reference to the amount of population; convenient situation of this land close to the village, *Dunn* 1335–1338——Very valuable character of the recreation ground, *ib.* 1338.

7. *Official Report by Assistant Inclosure Commissioner:*

Details submitted in the report of Mr. Wood; grounds for recommending that inclosure be sanctioned, *App.* 106–110.

8. *Draft Provisional Order:*

Draft Provisional Order, dated 23rd April 1877; conditions subject to which the Inclosure Commissioners are prepared to certify that the same should be confirmed by Parliament, *App.* 110, 111.

9. *Consents:*

Consents of the several parties interested by the Draft Provisional Order, *App.* 112.

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Riccall (*York*)—continued.

10. *Stipulation by the Committee for an Increase of Recreation Ground and Garden Allotments:*

Recommendation by the Committee that the inclosure be approved and confirmed by Parliament on condition that the recreation ground be augmented by not less than two acres, and that the field allotments be increased by ten acres, *Rep.* iii.

See also *Agriculture. Barlby Inclosure. Roads. Social Effect of Inclosure.*

Ridley, George. (Analysis of his Evidence.)—Belief that a certain paper setting forth the acreage and rental of North Luddenham parish includes the old inclosures as well as the lands now proposed to be dealt with, 9. 11——Formal application about to be made to the Inclosure Office for regulation in three cases, 47——Practice of calling upon the parties in every case to state why inclosure is preferred to regulation, 50, 51. 54——Information as to the character of the tenure in the North Luffenham case; reference hereon to the Assistant Commissioner's report, 68–73.

Rights of Pasture, &c. See *Barrowden*, 4. *Common Rights. North Luffenham. Riccall*, 4. *South Luffenham.*

Roads. Increased convenience to the public in so far as proper roads and footpaths may be constructed after inclosure of the commons, *Caird* 261–264——Important advantage of inclosure in the case of Riccall as leading to the construction of good roads across the common; question hereon whether this might not be equally obtained by regulation, *Coleman* 1162. 1271–1274.

S.

Sanitary Authorities. Absence of objection on the part of the local sanitary authorities to any of the proposed inclosures now under consideration, *Caird* 98.

Social Effect of Inclosure. Effect of inclosure in frequently giving a better tone and character to the locality; constant feuds and ill-will in some districts through disputes as to rights of pasture, *Caird* 140–144. 290–293——Evidence as to the data for the conclusion that the inclosures now proposed will effect improvement in the social condition and well-being of the several parishes, *ib.* 172–185.

Examination as to the information obtained at the Luffenham and Barrowden meetings upon which witness reported that a better tone and character would be given to the parishes by inclosure, *Wood* 377–401. 442, 443. 470–472——Disrepair of many of the cottages in Barrowden and Luffenham in 1871, since which year some of them have gone to ruin, *ib.* 473, 474.

Grounds for the conclusion that the labourers in Barrowden are a worse class than in adjoining parishes, and that their social position is by comparison inferior, *Martin* 791–810. 878–880. 951–959——Great deterioration in the condition of Barrowden in the last four or five years; very little capital in the place, and very little agricultural employment, *Thompson* 981, 982. 1005. 1008–1022—— Instance of a farm unlet because of an addition to the rent through some improvement; expected vacancy of three others, *ib.* 982–990.

Evidence in support of the conclusion that as a result of non-inclosure the population of Riccall is lower both socially and morally than that of adjoining parishes, *Coleman* 1144–1149. 1152. 1226–1234.

Particulars relative to the comparative amount of pauperism in Riccall and in Kelfield and other parishes in the same union; absence of any marked excess in the former case, *Dunn* 1299–1303. 1357–1374——Low moral status of Riccall; excessive amount of intemperance, *ib.* 1310, 1311. 1374–1376.

South Luffenham (*Rutland*):

Reference to the case of South Luffenham as comprising a large area of open arable fields, so that regulation is not applicable, *Caird* 98——Considerable improvement to be effected by increased cultivation, *ib.*——Liberal provision made by the owners in the shape of field gardens and recreation ground, *ib.*—— Intention so to distribute fifteen acres in field gardens that each cottage shall have about a quarter of an acre, *ib.* 138, 139——Absence of any dissenting commoner in this case, *ib.* 154, 155.

Probability of some claims to right of common in respect of houses in South Luffenham, *Wood* 374–376.

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South Luffenham (*Rutland*)—continued.

Official report of Mr. Wood, dated April 1877, submitting details in elucidation of the various questions involved, and reporting in favour of the expediency of inclosure *App.* 86–90.

Statement in Mr. Wood's report relative to the persons present at the two meetings, *App.* 86.

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Recommendation by the Committee that the inclosure be confirmed by Parliament, provided the recreation ground be augmented by not less than two acres, *Rep.* iii.

Stamford. Satisfactory effect of inclosure as regards the town of Stamford; abundant recreation ground provided for the town, *Caird* 252–255——Statement as to eight acres of recreation ground having been found too much for Stamford, though there are 8,000 inhabitants, *Martin* 732. 895, 896——Non-objection on the part of Stamford to the proposed inclosure of Barrowden, *Thompson* 979–981. 1000–1002.

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T.

Thompson, Richards. (Analysis of his Evidence.)—Action of witness, as solicitor on the part of Lord Exeter and other owners, in procuring the necessary consents of the parties interested in the Barrowden inclosure, 963–966——Long and intimate acquaintance of witness with Barrowden, and to some extent with North and South Luffenham, 967–972——Several years for which witness has been decidedly of opinion that inclosure would be exceedingly beneficial in the case of Barrowden, this being the universal feeling in the locality, 973–982. 994–999——Absence of objections in Stamford against the proposed inclosure, 979–981. 1000–1002.

Great deterioration in the condition of Barrowden in the last four or five years; very little capital in the place, and very little agricultural employment, 981, 982. 1005. 1008–1022——Instance of a farm unlet because of an addition to the rent through some improvement; expected vacancy of three others, 982–990——Explanation of a statement as to three persons having declined to join in the application for inclosure, 982——Presence of several labourers at the meeting held by the Commissioners without objections having been raised by any of them; inability of witness to give any of their names, 982. 1023–1033. 1055–1057.

Inadequacy of regulation in the case of Barrowden, though probably desirable as regards other commons; feeling expressed at the Barrowden meeting adverse to regulation, 982–984. 988, 989. 1034–1043——Possession of the right of stocking the common by the occupiers of the land and by some occupiers of commonable cottages without land, 984–987. 1070–1085——Desolate and uninviting condition of the lands proposed to be inclosed; they are exceedingly wet and are partly covered with brambles, 1003–1007. 1043–1046——Obstacle to inclosure formerly through Lord Exeter and Lord Aveland not having agreed on the subject, 1015–1020——Twofold increase of value beyond the rents, as increased four years ago, if inclosure be carried out, 1021, 1022.

Further statement as to the unanimity of the local feeling in favour of inclosure, 1049–1057——Explanation relative to the right of shooting and fishing as now exercised over the common land and waste, and as likely to be affected if inclosure be carried out; dispute between the two chief owners as to the right of shooting, 1058–1069. 1104–1115——Information as to the extent to which consents were obtained from the owners of commonable cottages as well as from the occupiers of land, 1070–1089——Increase of rents in Barrowden further adverted to in reference to the value of the land and the difficulty of letting; undue increase in some instances, 1090–1103.

W.

Wisley Inclosure. Explanation that witness was not employed in the Wisley case, but that the Assistant Commissioner who was employed issued a written statement in justification of his report to the Commissioners, *Wood* 495–499.

Wood, Charles. (Analysis of his Evidence.)—Explanation that the applications for inclosure in the cases now before the Committee were referred by the Inclosure Commissioners to witness, as Assistant Commissioner, together with the answers of the applicants to questions previously submitted to them; local inquiry thereupon held by witness in each case, 324–328——Circumstance of the meetings for North and South Luffenham having both been held in the former parish, having succeeded each other, and having been attended for the most part by the same persons, 329–342——Attendance chiefly of soli-

Wood, Charles. (Analysis of his Evidence)—*continued.*

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Brought from the Lords, 27th July 1877.

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REPORT

FROM THE

SELECT COMMITTEE OF THE HOUSE OF LORDS

ON

CONSERVANCY BOARDS, &c.;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

AND APPENDIX.

Ordered, by The House of Commons, *to be Printed,*
28 *July* 1877.

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REPORT.

BY THE SELECT COMMITTEE appointed to inquire into the Operation of existing STATUTES in regard to the Formation of and Proceedings by COMMISSIONERS of SEWERS, and CONSERVANCY, DRAINAGE, and RIVER NAVIGATION BOARDS;——To consider by what means such Bodies may be more conveniently and inexpensively constituted, their Procedure improved, and their Powers enlarged so as to provide more efficiently for Storage of Water, the Prevention of Floods, and the Discharge of other Functions appertaining to such Boards; and to report to The House.

ORDERED TO REPORT,

THAT the Committee have met and considered the subject matter referred to them, and, having examined a considerable number of Witnesses in relation thereto, have agreed to the following Report:—

I. It is evident to the Committee, from the information which has been laid before them, that considerable damage has been caused in various parts of England by the prevalence of floods during the last winter, and that such floods have been more frequent and of longer duration in recent times than formerly.

Among the causes which have been assigned for this state of things, the Committee find that prominence is given to the very general adoption of the system of subsoil drainage, owing to which a greatly augmented quantity of water is rapidly carried into rivers, and to the deterioration which is constantly taking place in the channels of the rivers themselves, whereby they are rendered inadequate to carry off the drainage of their respective water-sheds.

The Committee gather from the evidence that if the channels and outfalls of rivers be properly cared for, any water flowing into these rivers from the catchment basins of which they are the outlets, may reasonably be expected to be discharged by them in sufficient time to render unlikely any serious damage to agricultural lands by floods.

It is the opinion of several witnesses of experience, that floods of moderate duration are not always prejudicial, but, on the contrary, have the effect of improving and fertilising grass lands by the deposit which they bring down, and that in such cases it is mainly when, owing to insufficient arterial drainage, or other causes, flood waters are suffered to stagnate upon the soil for a lengthened period that injurious consequences are found to arise.

One of the principal points to which the Committee have directed their attention has been the best means of preserving the channels and outfalls of rivers in such a condition as to suffice for the discharge, with reasonable facility, of the waters flowing into them; and in order to arrive at a judgment upon this point, it has been necessary to inquire at some length into the manner by which the conservancy of rivers is at present regulated.

II. The first public statute which undertook to deal with river conservancy, and that upon which all subsequent legislation in reference to this subject was

founded, is the 23 Henry VIII. c. 5; that statute provided for the appointment of Commissioners of Sewers, with very extensive powers for taking such measures as they might think proper for preventing floods and improving the state of rivers. These Commissioners were appointed by the Sovereign upon the recommendation of certain Officers of State, and remained in office during the Royal Pleasure. The particular mode of executing their duties was left very much to their own discretion, and the expenses which they might incur for works of repair, demolition, or improvement, were to be defrayed by the riparian owners, in proportion to the benefit derived from the works. Subsequent Acts defined and extended their powers, and in the year 1861 further provision was made for the drainage of agricultural lands by the Land Drainage Act (24 & 25 Vict. c. 133), in which the representative principle seems for the first time to have been adopted, as regards the choice of persons, to deal with arterial drainage. This Act, however, related mainly to the drainage of land for agricultural purposes, and did not materially affect the constitution or functions of Commissioners of Sewers.

It is generally acknowledged that these Acts have not worked successfully for the prevention of floods; and this seems to be owing partly to defects in the machinery provided for carrying the Acts into execution, and partly to obstructions caused by private legislation.

As regards the first of these causes, although very large powers of executing works and of rating have been conferred upon the persons charged with the execution of these general Acts, their duties have only been indicated in a vague and general manner; and it further appears that certain powers are wanting which are essential for the maintenance of an adequate system of drainage. In addition to this, the constitution of either a Commission of Sewers or an elective Drainage Board for any district is not compulsory, so that in many cases districts urgently in need of such bodies are without them. The principle of rating exclusively according to the benefit received is difficult of application, and is frequently found to work unsatisfactorily in practice. Moreover, owing to the existence of several distinct authorities for the course of a single river, conflicts have arisen which are fatal to the adoption of any uniform and comprehensive scheme for the conservancy of the river as a whole, and there is, moreover, an absence of responsibility, which may be held to account, in a great measure, for the present neglected state of several important streams.

The difficulties which private legislation has placed in the way of any public system of conservancy are many and grave. It has been stated to the Committee that there are between 2,000 and 3,000 private Acts now in operation which relate to drainage, navigation, and matters of a similar kind; and the interests of the several persons, or bodies of persons, in whose behalf these Acts were passed, are frequently found to conflict with the due exercise of the powers granted under the public Acts above referred to. This more especially applies to private Acts relating to canals and navigations, in many of which, while the main purpose of the particular Act has in great measure, or entirely, ceased, the duties imposed by it are still required to be discharged. Moreover, as the general Acts provide for the maintenance of the rights conferred by private Acts, Commissioners of Sewers and district Drainage Boards are powerless to interfere with such rights, however inconsistent with the public interest.

There is a further obstacle, arising from liability *ratione tenuræ* for the maintenance of river banks. This liability, being in the case of many rivers distributed among a large number of riparian owners, can rarely be enforced with such uniformity as to make it thoroughly effective for maintaining the banks along the whole of a river at any one time.

III. The sufficiency of the main channel of a river may be affected by several causes; such as a continuance of heavy rain within the area of the watershed, and by various natural and artificial obstructions, all tending to limit the capacity of the channel. With these causes the Committee believe that it is possible to deal, more or less, successfully. At the same time rivers are found to differ so widely in their characteristics that in the opinion of the Committee it would be impracticable to prescribe any general scheme of conservancy which would be applicable to all rivers without exception.

The

The particular measures therefore which should be adopted for keeping the main channel in a satisfactory condition must, the Committee think, be left to be determined by a consideration of the circumstances of each separate case.

IV. The Committee find that almost all the witnesses examined by them are of opinion that in order to secure uniformity and completeness of action in dealing with each river, each catchment area should, as a general rule, be placed under a single body of Conservators, who should be responsible for maintaining the river from its source to its outfall in an efficient state, and in this view the Committee entirely concur. With regard, however, to tributary streams, the Committee consider the care of these might in some instances be entrusted to district committees, acting under the general direction of the Conservators; but near the point of junction with the principal stream, they should be under the direct management of the Conservators of the main channel, who should be a representative body, constituted of residents and owners of property within the whole area of the watershed.

In some instances a tributary stream might be of such magnitude and importance as to require a separate Conservancy Board for itself. In these cases it might be desirable to vest in some authority the power of deciding differences which may arise between these co-ordinate bodies.

Although the Committee are of opinion that means should be taken to ensure the appointment of a Conservancy Board for each watershed area, they consider that it should, in the first instance, result if possible from the application of persons having an interest in the district. Upon receiving such application, the Department of Government, in whose province the matter may lie, should send an inspector to the locality, who should ascertain the necessities and capacities of the district, and suggest the area and proportions of taxation. After this inquiry a scheme should be framed by the Department, and deposited in some public place or places in the district, and public notice should be given of its purport, and a time appointed for hearing objections to it. When the objections have been heard, the scheme, with such modifications as may be deemed necessary, should be embodied in a Provisional Order to be submitted to Parliament for confirmation.

The scheme should prescribe the constitution of the proposed Conservancy Board, and should provide for the repeal of the provisions in any Local or other Acts, preventing or in any way interfering with the system of management contemplated by the scheme.

V. The jurisdiction of the Conservancy Board should include the power of removing obstructions, improving outfalls, and of deepening and dredging the bed of rivers, and such power of dealing with river banks and bridges, and of compulsorily acquiring land at a fair compensatory value as may be conferred upon them by Provisional Order. Duly limited powers of rating should be conferred upon them.

The Committee are also of opinion that the Conservancy Boards should be enabled to execute the powers for the prevention of the pollution of rivers, conferred on local authorities by the Rivers Pollution Prevention Act.

The removal of obstructions would frequently necessitate an interference with prescriptive rights of millowners and others in respect of dams and weirs and millgates, and the Committee think that whilst such rights should be made the subject of compensation when requiring to be interfered with, great caution should be exercised in dealing with them, as the evidence before the Committee points to the conclusion that weirs and dams, when constructed in a proper manner, are not necessarily prejudicial.

The Committee are of opinion that it should be competent to the Conservancy Board to take such steps, by arrangement or otherwise if necessary, as shall provide for the opening of millgates, in the event of flood or expected flood.

Among the measures for averting floods which have been suggested to the Committee, that of embankment has taken a prominent place; and if this were to be carried out in the manner proposed, it would occasionally be necessary for the Conservancy authority to interfere with private property along the sides of a river, and to restrict the manner in which the owners of such property could

exercise their proprietary rights. The extent to which this might be done should be specially provided for by Provisional Order.

Where the rights of the Crown, or of public bodies are concerned, as, for instance, in any question of dealing for conservancy purposes with the foreshore, or with county bridges, special provision will be required.

In order to facilitate the legislation necessary to give effect to their recommendation, the Committee are of opinion that a general statute in the nature of the statutes known as the Companies Clauses or Lands Clauses Consolidation Acts should be passed, embracing all the provisions applicable to this subject, and that so much of such general statute as is applicable to each particular case, should be incorporated with, and form part of, every Provisional Order, issued for the constitution of a conservancy district.

VI. With regard to the principle of assessment which should be adopted in raising the rates which would be required to meet the expenses of conservancy, the Committee find that there is much variance of opinion. The principle introduced by the Statute of Henry VIII., and observed ever since, of taxing in proportion to the benefit conferred in each particular case by the works of conservancy, appears to work unfairly in some instances, and to be incapable of application in others. That of taxing equally all riparian lands included within a certain level seems likewise to be open to objection.

They are strongly of opinion that towns and houses should contribute to the rates in question.

At the same time there does not appear to be any injustice in rating uplands to the maintenance of a channel to which they contribute their quota of waters, and the case is still stronger with respect to towns which are at present exempt from taxation for this purpose. There is also, as the Committee think, no reasonable objection to the taxation of lands, &c., situated upon tributary streams on account of their being taxed for the conservancy of such streams.

Having regard to these considerations, and looking to the extreme difficulty of rating lands according to the benefits derived, the Committee think that the rates should be distributed over the whole area of a watershed, the lands and houses below the flood level being rated at a higher amount than those above it, and other graduations and exceptions being made to meet particular cases.

Subject to the above recommendations, the Committee think that the taxation required for drainage purposes should be levied on the basis of rateable value.

And the Committee have directed the Minutes of Evidence taken before them, together with an Appendix and Index, to be laid before your Lordships.

24 July 1877.

ORDER OF REFERENCE.

Die Veneris, 23° *Martii* 1877.

CONSERVANCY BOARDS, &c.

Moved, That a Select Committee be appointed to inquire into the operation of existing statutes in regard to the formation of and proceedings by Commissioners of Sewers, and Conservancy, Drainage, and River Navigation Boards.

To consider by what means such bodies may be more conveniently and inexpensively constituted, their procedure improved, and their powers enlarged so as to provide more efficiently for storage of water, the prevention of floods, and the discharge of other functions appertaining to such Boards.

Agreed to—(The *Lord President.*)

Die Lunæ, 23° *Aprilis* 1877.

Select Committee: The Lords following were named of the Committee:

Lord President (Duke of Richmond and Gordon).	Lord Monson.
Duke of Bedford.	Lord Vernon.
Duke of Northumberland.	Lord Stewart of Garlies.
Marquess of Salisbury.	Lord Meldrum.
Marquess of Ripon.	Lord Ker.
Earl of Sandwich.	Lord Penrhyn.
Earl Cowper.	Lord Somerton.
Earl Stanhope.	Lord Winmarleigh.

The Committee to meet on Friday next, at Four o'clock, and to appoint their own Chairman.

Die Martis, 24° *Aprilis* 1877.

The Viscount Eversley added to the Committee.

Die Veneris, 27° *Aprilis* 1877.

The evidence taken before the Select Committee from time to time to be printed for the use of the Members of this House; but no copies thereof to be delivered, except to Members of the Committee, until further order.

LORDS PRESENT, AND MINUTES OF PROCEEDINGS AT EACH SITTING OF THE COMMITTEE.

Die Veneris, 27° *Aprilis* 1877.

LORDS PRESENT:

Lord President.	Viscount Eversley.
Duke of Bedford.	Lord Monson,
Duke of Northumberland.	Lord Stewart of Garlies.
Marquess of Ripon.	Lord Ker.
Earl of Sandwich.	Lord Penrhyn.
Earl Cowper.	Lord Somerton.
Earl Stanhope.	Lord Winmarleigh.

Order of Reference read.

It is proposed that the Lord President do take the Chair.

The same same is agreed to, and the Lord President takes the Chair accordingly.

Order of the House of Tuesday last, adding the Viscount Eversley to the Committee, read.

The course of Proceeding is considered.

Ordered, That the Committee be adjourned to Monday next, at Twelve o'clock.

Die Lunæ, 30° *Aprilis* 1877.

LORDS PRESENT:

Duke of Bedford.	Lord Monson.
Duke of Northumberland.	Lord Vernon.
Marquess of Salisbury.	Lord Stewart of Garlies.
Marquess of Ripon.	Lord Meldrum.
Earl of Sandwich.	Lord Ker.
Earl Cowper.	Lord Penrhyn.
Earl Stanhope.	Lord Somerton.
Viscount Eversley.	Lord Winmarleigh.

Order of adjournment read.

It is proposed, That the Marquess of Salisbury do take the Chair in the absence of the Lord President.

The same is agreed to.

Order of the House of Friday last, That the Evidence taken before the Select Committee from time to time be printed for the use of the Members of this House; but that no copies thereof be delivered, except to Members of the Committee until further Order, read.

The Proceedings of the Committee of Friday last are read.

The following Witnesses are examined (*vide* the Evidence), viz.: Mr. *George Ridley*, Mr. *Robert Rawlinson*, C.B.

Ordered, That the Committee be adjourned to Thursday next, at Twelve o'clock.

Die Jovis, 3° *Maii* 1877.

LORDS PRESENT:

Lord President.	Lord Vernon.
Duke of Bedford.	Lord Stewart of Garlies.
Duke of Northumberland.	Lord Meldrum.
Marquess of Ripon.	Lord Ker.
Earl of Sandwich.	Lord Penrhyn.
Earl Cowper.	Lord Somerton.
Viscount Eversley.	Lord Winmarleigh.

The LORD PRESIDENT in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Monday last are read.

Mr. *Arthur Wellesley Peel*, M.P., attending, is examined.

The following Witnesses are examined (*vide* the Evidence), viz.: Mr. *James Abernethy*, C.E., Mr. *Thomas Coote*.

Ordered, That the Committee be adjourned to Monday next, at Twelve o'clock.

Die Lunæ, 7° *Maii* 1877.

LORDS PRESENT:

Lord President.	Lord Vernon.
Duke of Bedford.	Lord Stewart of Garlies.
Duke of Northumberland.	Lord Meldrum.
Earl of Sandwich.	Lord Ker.
Earl Cowper.	Lord Penrhyn.
Earl Stanhope.	Lord Somerton.
Viscount Eversley.	Lord Winmarleigh.

The LORD PRESIDENT in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Thursday last are read.

The following Witnesses are examined (*vide* the Evidence), viz.: Mr. *Samuel Usher Roberts*, Mr. *Richard Boxall Grantham*, and Mr. *Andrew Percival*.

Ordered, That the Committee be adjourned to Monday next, at Twelve o'clock.

Die Lunæ, 14° *Maii* 1877.

LORDS PRESENT:

Duke of Bedford.	Lord Monson.
Duke of Northumberland.	Lord Vernon.
Marquess of Salisbury.	Lord Meldrum.
Marquess of Ripon.	Lord Penrhyn.
Earl Cowper.	Lord Somerton.
Earl Stanhope.	Lord Winmarleigh.
Viscount Eversley.	

Order of adjournment read.

It is proposed that the Marquess of Salisbury do take the Chair in the absence of the Lord President.

The same is agreed to.

The Proceedings of the Committee of Monday last are read.

The following Witnesses are examined (*vide* the Evidence), viz.: Mr. *Benjamin Shaw Brundell*, C.E., Mr. *Marriott Ogle Tarbotten*, C.E., Mr. *Richard Lee Furley*, Mr. *Joe Child*, Mr. *George Corble*.

Ordered, That the Committee be adjourned to Thursday next, at Twelve o'clock.

Die Jovis, 17° *Maii* 1877.

LORDS PRESENT:

Lord President.	Viscount Eversley.
Duke of Bedford.	Lord Monson.
Duke of Northumberland.	Lord Vernon.
Marquess of Ripon.	Lord Stewart of Garlies.
Earl of Sandwich.	Lord Penrhyn.
Earl Cowper.	Lord Somerton.
Earl Stanhope.	Lord Winmarleigh.

The Lord President in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Monday last are read.

The following Witnesses are examined (*vide* the Evidence), viz.: Mr. *John Lloyd*, Mr. *Edward Leader Williams*, C.E., Mr. *William Hamond Bartholomew*, C.E.

Ordered, That the Committee be adjourned to Thursday, the 7th of June, at Twelve o'clock.

Die Jovis, 7° *Junii* 1877.

LORDS PRESENT:

Lord President.	Viscount Eversley.
Duke of Northumberland.	Lord Stewart of Garlies.
Marquess of Ripon.	Lord Meldrum.
Earl of Sandwich.	Lord Penrhyn.
Earl Cowper.	Lord Somerton.
Earl Stanhope.	Lord Winmarleigh.

The LORD PRESIDENT in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Thursday, 17th May, are read.

The following Witnesses are examined (*vide* the Evidence), viz.: Mr. *Francis Thirkill White*, Mr. *John Thomas Tweed*, Mr. *Charles Prentice Tebbutt*, Mr. *George Gladstone Macturk*.

Ordered, That the Committee be adjourned to Monday next, at Twelve o'clock.

Die Lunæ, 11° *Junii* 1877.

LORDS PRESENT:

Lord President.	Viscount Eversley.
Duke of Bedford.	Lord Monson.
Duke of Northumberland.	Lord Vernon.
Marquess of Ripon.	Lord Stewart of Garlies.
Earl of Sandwich.	Lord Penrhyn.
Earl Cowper.	Lord Somerton.
Earl Stanhope.	Lord Winmarleigh.

The LORD PRESIDENT in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Thursday last are read.

The following Witnesses are examined (*vide* the Evidence), viz.: Mr *John Hooke Taunton*, Mr. *Robert William Fenwick Mills.*

Ordered, That the Committee be adjourned to Monday next, at Twelve o'clock.

Die Lunæ, 18° *Junii* 1877.

LORDS PRESENT:

Lord President.	Lord Vernon.
Duke of Bedford.	Lord Stewart of Garlies.
Duke of Northumberland.	Lord Ker.
Marquess of Ripon.	Lord Penrhyn.
Earl of Sandwich.	Lord Somerton.
Viscount Eversley.	Lord Winmarleigh.
Lord Monson.	

The LORD PRESIDENT in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Monday last are read.

The Committee direct that a Digest of the Evidence of the several Witnesses already examined shall be forthwith prepared and forwarded to the Members of the Committee, and that such Digest be continued from time to time as further Witnesses are examined.

The following Witnesses are examined (*vide* the Evidence), viz.: Mr. *John Bailey Denton* and Mr. *William Layton Lowndes.*

Ordered, That the Committee be adjourned to Monday next, at Twelve o'clock.

Die Lunæ, 25° *Junii* 1877.

LORDS PRESENT:

Lord President.	Lord Vernon.
Duke of Northumberland.	Lord Stewart of Garlies.
Earl Cowper.	Lord Ker.
Earl Stanhope.	Lord Penrhyn.
Lord Monson.	Lord Somerton.

The LORD PRESIDENT in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Monday last are read.

The Earl of *Malmesbury* being present, is examined.

The following Witnesses are examined (*vide* the Evidence), viz.: Mr. *Robert Hawkins*, Sir *John Hawkshaw*, C.E.

Ordered, That the Committee be adjourned to Tuesday, the 24th of July, at Two o'clock.

Die Martis, 24° *Julii* 1877.

LORDS PRESENT:

Lord President.	Viscount Eversley.
Duke of Northumberland.	Lord Monson.
Marquess of Salisbury.	Lord Vernon.
Marquess of Ripon.	Lord Ker.
Earl of Sandwich.	Lord Penrhyn.
Earl Cowper.	Lord Somerton.
Earl Stanhope.	Lord Winmarleigh.

The LORD PRESIDENT in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Monday the 25th of June last are read.

The Draft of a Report is laid before the Committee by the Chairman.

The same is read; several Amendments are made therein, and the same, as amended, is *agreed to*.—(*Vide* the Report.)

Ordered, That the Lord in the Chair do make the said Report to the House.

MINUTES OF EVIDENCE.

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Die Lunæ, 30° *Aprilis*, 1877.

PRESENT:

Duke of BEDFORD.	Lord MONSON.
Duke of NORTHUMBERLAND.	Lord VERNON.
Marquess of SALISBURY.	Lord STEWART of GARLIES.
Marquess of RIPON.	Lord MELDRUM.
Earl of SANDWICH.	Lord KER.
Earl COWPER.	Lord PENRHYN.
Earl STANHOPE.	Lord SOMERTON.
Viscount EVERSLEY.	Lord WINMARLEIGH.

THE MARQUESS OF SALISBURY, IN THE CHAIR.

MR. GEORGE RIDLEY, is called in; and Examined, as follows:

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1. *Chairman.*] YOU are one of the Inclosure Commissioners?
Yes.

2. You have jurisdiction under the Act of 1861, I believe, to appoint Commissioners of Sewers, and generally to carry out the provisions of that Act?
We have so far as regards the appointment of Commissioners of Sewers, and the appointment of Drainage District Boards under Part II. of that Act.

3. You have occasion, therefore, to be familiar with the state of the law as it now exists on the subject?
Yes.

4. Could you give the Committee an account of the Public Acts relating to Commissioners of Sewers now in force?
I have brought down four lists, which I will hand in; the first is a list of the general statutes relating to Commissions of Sewers now in force. I think that with reference to one or two of those they may be partially repealed, but they are still in the revised edition of the statutes. I would next hand in a list of the Commissions of Sewers now in force, issued pursuant to the Act of Henry the Eighth; that I obtained through the kindness of the Crown Office the other day. I have also a list of the cases in which Commissions of Sewers were recommended to the Home Office under Part I. of the Act of 1861; and also a list of the separate drainage districts for which Provisional Orders were issued, and Acts of Parliament have been passed under Part II. of the Act of 1861. (*The Papers are handed in.*)

5. Earl of *Sandwich.*] That Act related to agricultural drainage, I think?
Yes, to arterial agricultural drainage; it does not apply to anything in the nature of sanitary matters or drainage for sewage purposes; it was confined to agricultural arterial drainage.

6. *Chairman.*] To what extent does the legislation apply to the subject which is referred to this Committee, namely, the prevention of floods?
The Act would apply incidentally to the prevention of floods, by the establishment of these large drainage districts, or Commissions of Sewers, under which they would have power to make such outfalls and arterial drainage as would carry off the floods.

7. But floods are the result of the rivers rising; pouring more water into the river will not prevent the rivers from rising?
No, I do not know that the powers of the Act in that respect are very large or powerful; I think not; I think the powers of the Act extend more to enabling the water to be carried off properly from the land when the floods come.

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8. Into the rivers?
Into the main river.

9. Then it is rather an Act for increasing floods than for diminishing them?
I cannot say that it is that. It certainly was not intended for that; but there is nothing in the Act which enables them to take steps to prevent floods coming down.

10. But the Act of Henry the Eighth does give facilities for preserving the river banks and river bottoms, does it not?
Yes; so there will be found in this Act of 1861, I think, large powers under the Commissions of Sewers and Drainage District Boards to do many things that facilitate the removal and the carrying off of the water, but there is nothing actually that gives them powers of prevention, such as I understand your Lordship to refer to.

11. I suppose there are only three methods of preventing floods; impounding the water, deepening the bottom, and raising the banks. Is any one of those under the jurisdiction of the Commissions of Sewers?
Yes, the Commissions of Sewers could execute those works.

12. Are there Commissions of Sewers which have jurisdiction over the rivers of a conservative character?
I know nothing connected with Commissioners of Sewers that we have to deal with that in any way has such a power as Conservancy Boards I understand have; but Conservancy Boards never have come before us; and beyond the fact that they have, I believe, a more general jurisdiction to keep up waters than Commissioners of Sewers, I am not acquainted with them at all.

13. Are there any Commissions of Sewers under your jurisdiction, or within your knowledge, that practically have it for their duty to keep the river bed open, or to preserve the banks?
There would be the general powers under the Commissioners of Sewers Acts, no doubt, and this Act of 1861 to keep the waters down, to prevent the flooding, and keep the bed of the rivers properly cleaned or scoured, and to put up fresh embankments where it is necessary.

14. Do they, as a matter of practice, ever do so?
We have nothing to do with them after we have constituted the district; it would not come within our knowledge whether they have or not done them.

15. Have they power to make reservoirs to impound waters?
Yes, they have; but not for such purposes, I think, as domestic purposes in use, or for town and villages.

16. But for the prevention of floods?
For the prevention of floods I do not think they could; I think it would be confined more to impounding water for the use of cattle, and irrigation.

17. Will you tell me what powers they have under the two Acts for the other two purposes, namely, the deepening the bed, or preserving the bed, and the banks of the river?
There are general powers of that sort; the Act of Henry the Eighth gives them very large powers of every sort; then there come the amending Acts, the 3rd & 4th of William the Fourth, and some of Victoria; and then there comes finally this Land Drainage Act of 1861.

18. What rating powers have they for the purpose?
They have rating powers under all the Acts.

19. Unlimited?
They are limited to a certain extent; perhaps I had better give your Lordships a short reference to the Rating Clauses under the different Acts of Parliament; the rating clauses are as follows: the first statutory power that I can find is in the general form of the Commission under the Act of Henry the Eighth. There is a power to tax, assess, and charge; there comes then a power of distress under that same Act, and the principle upon which the rating seems to be based is this; a man is to be rated according to his portion or profit, or quantity of the lands, pastures, and so forth, that he may occupy or possess, or the profit he may derive from the thing that is done. They have power under that same Act

Act to make decrees for everything mentioned in their Commission, and they have a power under that same Act in cases where there are arrears of rates to lease lands and receive the rents and profits, accounting for them, I suppose, and keeping what is necessary from them for their purposes. Then I come to 3 & 4 Will. 4, c. 22.

20. Earl of *Sandwich.*] May I ask, first, with regard to Henry the Eighth's Act, to whom is that power given?

To the bodies called Commissioners of Sewers under that Act, who can be named by the Lord Chancellor; and the Commission there is issued by the Crown.

21. But virtually those parties do not exist?

I applied to the Crown Office a short time ago to know whether there were any Commissions of Sewers existing now in force issued under the Crown, and they had the kindness to send me that list which I have already handed in.

22. *Chairman.*] You say that the rating is proportionate to the profit which a man is to derive from the operation; but usually the money is not spent in the place where the profit is derived?

That is the principle laid down in the Act of Henry the Eighth.

23. Then the Act of Henry the Eighth would give no power for rating the people of a district where the works had to be performed, but only the people lower down who were saved by the upper works?

No, I think they would have to do that also; they would have to rate the lands which would have the benefit of the works which were done in the immediate locality of those lands and places. The words are, "To tax, assess, charge, distrain, and punish after the quantity of their lands, tenements, and rents by the number of acres and perches, after the rate of every person's portion, tenure, or profit, or after the quantity of their common of pasture, profit of fishing, or other commodities there."

24. Is not that merely a general phrase for rateable value?

Perhaps it is, but that is the only rating power that I find particularly under that statute.

25. Do you know whether the Commissions which you have given us a list of rate under that power or under private Acts?

They are not confined to rating under that power; the Acts passed subsequently relating to Commissioners of Sewers are cumulative, and do not supersede the Act of Henry the Eighth, and therefore they would be now probably exercising their powers of rating under later Acts, such as the 3 & 4 of Will. 4, c. 22, and others mentioned in my list.

26. What are the provisions of that Act?

In the first place, they can form separate and distinct rates on separate and distinct districts; they afterwards, having formed the separate and distinct districts, apportion the money between incoming and outgoing tenants and occupiers of the lands benefited; and the principle seems again to have been adopted in that Act, that they were to go upon the principle of receiving benefit or avoiding damage. Therefore if the land by the operation of any works avoided damage as well as received benefit, it would appear to come within the liability of rating for the purpose of the works executed.

27. Who judges that question?

The Commissioners of Sewers would assess the rate, and there would be an appeal, no doubt, probably to the court of quarter sessions. There then follow some more rating powers, the clauses relating to rating in the 4 & 5 Vict. c. 45, where there is a power under Section 1 for certain purposes, but for no other purpose whatsoever, to tax certain lands.

28. What are the "certain purposes"?

I must refer to the Act for that, for it is a very long story.

29. That Act, I see, is only for paying surveyors?

Yes, surveying and other things are mentioned; but it saysth at there is a difficulty; that "the powers in some cases are not sufficient to make, assess, or levy any taxes, rates or scots, which could be applied to the several purposes

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aforesaid, or any of them"; therefore they distinguish there again; and "it shall be lawful for any court of sewers for all or any of the purposes aforesaid, but for no other purpose whatsoever, to tax in the gross" each parish.

30. But the "purposes aforesaid" are only for surveying, collecting, and litigation?

Collecting, and expending certain taxes, rates, and scots.

31. It is merely for machinery, is it not?

However, they are able "to tax in the gross in each parish such lands which hereafter shall be within the jurisdiction of such court, but so that such lands and hereditaments shall contribute thereto in proportion to the benefit and advantage received or capable to be received from the said court." That principle again comes in, and then there is to be a general sewers tax.

32. Are there any powers of rating under the Act of 1861?

Yes, there are powers under that. Then Sections 3 and 4 of the 4 & 5 Vict. c. 45, also apply to rating.

33. What we rather wish is to get at the general principle; those are details which is hardly necessary to go into?

There are further powers as extended by the next Act, 12 & 13 Vict. cap. 50; then you come to the Land Drainage Act of 1861. Section 38 has the general power of rating. Then you come to the incidence of rates where it draws a distinction, that improvements in old or any new works shall be a special rate and a tax on owners.

34. Then the result of all the provisions which you have laid before the Committee is that, supposing there were no legal complications, and that the intention of the Statutes was carried out by their machinery, there would be ample power of rating in the Boards of Commissioners of Sewers for the purpose of improving the bed of a river, or raising its banks, and so preventing floods?

Certainly, they have the power of executing such works as your Lordship has referred to, of making the embankments and cleaning the stream; as to the third kind of work, the impounding, I will not speak so certainly about that, but my impression is that they cannot impound or make reservoirs for what I would call domestic purposes of villages and populations.

35. Now, is it the fact that every considerable river is under a Commission of Sewers?

No, I should be very sorry to say the number that actually exist; but there are a large number of private Acts that deal with drainage, navigations, and such like things, under several classes.

36. And have they ousted the powers of the larger Acts, the public Acts?

I do not think they have ousted them so much as this, that in every public Act that is passed you find exemptions and relieving clauses, saving of rights, as it is called; and you will find in those general Acts sometimes very large words saving the rights of this or that body of Commissioners of Sewers and others, the powers formed under the separate local Acts. In the Land Drainage Act, 1861, there is mentioned the phrase "Improvement Commissioners." Now, when you come to take in all those bodies, it comes to an enormous number of Acts which, as long as they exist, certainly may prove to be very injurious and very difficult to overcome in the operations required by Commissioners of Sewers or drainage districts.

37. You mean that all those private Acts set up powers which are a hindrance to the action of the general powers?

They are; and in their present state I think that in a very great number of those Acts they have no power whatever to forego their powers and duties, not legally. That observation would apply a great deal to private Acts relating to canals and navigations. Now, in a great number of those Acts there are duties as well as powers to keep up water for navigation. The purpose of that Act, say, the keeping up a navigable canal, has long since ceased and passed; but the body constituted under that Act is not absolved in a legal manner from the duty of keeping up that water, though it is no longer necessary.

38. Then when a Commission of Sewers wishes to improve the bed of a river,

river, it is met by the difficulty that it is impeding some canal company in keeping up the water of that canal?

It may be met in that way; and I do not know that there is any general power really to absolve that Navigation Commission, we will say established under a private Act, from that duty of keeping up the water.

39. Is it by that hindrance that you would explain the fact that, there being in the law such an ample power for the purpose of preventing floods, floods, as a matter of fact, are not prevented?

I do not know that that would apply solely to such cases as the navigable streams; but, undoubtedly, it would materially affect the intention of a Commission of Sewers that wanted to lower waters in a stream, which had by a private Act been declared a navigable stream.

40. Are there any other hindrances besides the vested rights of canals?

There is one very great hindrance, I think, that applies to Commissioners of Sewers and District Boards, arising from the liability *ratione tenuræ*, which, I think, certainly requires to be dealt with, and much in the same way as the obstructions that might arise, which I just alluded to, with regard to Canal and Navigation Acts.

41. Will you explain the liability *ratione tenuræ*?

The liability *ratione tenuræ* is this: there is a district of lands, say, lying along here; all among the owners of that district are liable, in respect of those lands, to keep up either the whole, or some portion of, the river embankment, or a sea wall, or to do something to cleanse and repair a particular part, or branch of an affluent, adjoining the main stream, and the owner is liable to do that *ratione tenuræ* on account of his bit of land here, which is perhaps two miles off, or it may be close by. How can you force that man to do it. I believe the only practicable way, and that is not a very practical way, is to fine him.

42. How does this liability arise; at common law?

Yes, I daresay it has originally arisen by common law; it is one of the very old standing liabilities, and, to my knowledge, it applies not only to such things as river embankment and such like matters, but I know it applies also to maintenance of bridges and other things upon manors; you have a difficulty, therefore, in enforcing the execution by this man of his work perhaps, but your difficulty is very much greater, because this liability to keep up the sea wall, which originally was a liability, say, upon the whole of that tract of land, has by reason of the subdivision of the land, become divided perhaps into 20, 30, 40, or even 100 other people. Every person who bought a bit, took his share of the liability; but it does not follow that there is any power of compelling all those people now to set to work at the same time, and do the necessary repair for a great sea wall which has become dangerous.

43. Is it not simpler to pass by the liability *ratione tenuræ* altogether, and use the powers of the Statute of Henry the Eighth, and do it by rating under that Act?

The liabilities *ratione tenuræ* are all preserved under the existing Acts.

44. Do you mean that the Commissioners of Sewers may not themselves execute any work which might be executed; could it be enforced by the liability *ratione tenuræ*?

I rather think they could not. The question certainly has been attended with very considerable difficulty in some places, and I have had it brought to my notice a great deal from Somersetshire. There is in Somersetshire a very long sea wall, which is in a very dangerous state, utterly inadequate for the proper protection of the land there. I believe the liability to repair that sea wall is divided among a great number of people, and perhaps one man will go and having to do a yard will proceed to do it, but it is very difficult for him to make that one yard proper, because his two neighbours who ought to do each of them another yard, or less, do not go at the same time and work together; one, perhaps, does it one month, and another another month; so that it is done, but then it is done in such a piecemeal way, that it is like putting a piece of new cloth into an old coat. I think that liability *ratione tenuræ* is one of the great features, so far as regards large arterial drainage districts, that requires to be decidedly

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altered. There is already existing a power under the Act for commutation of liability *ratione tenuræ*; that is under the Act of 1861, s. 34. We have a jurisdiction upon representation made by the Commission of Sewers, to commute that liability, but we have only done that in two cases; and I believe that the difficulty has arisen from this, that unless they commute the whole of the liabilities in a particular district, it is very little use commuting one or two; you are still met by that great impediment of piecemeal and patchwork. It is difficult perhaps to venture to offer a solution of the difficulties, but I should be inclined myself to say, considering that there is an enormous public advantage to be got by it, extend that power of commutation, and say that when a Commission of Sewers, or Drainage District Board is established, and they find such things in their district, it shall be their duty to commute them. The effect of it is simply this: they survey the man's land, and either by agreement or by valuation a settlement takes place; there is an appeal if necessary; they say, very well, you will no longer be liable for this repair *ratione tenuræ*, but we fix upon your land 10 *s.*, or 1 *l.* an acre, or whatever it may happen to be; then that liability has altogether ceased; they have done away with it; they go upon him in proportion for the 10 *s.* or the 1 *l.*, but they have done away with his liability to execute the works.

45. The result may be that a small part of the parish is left with the whole liability on its shoulders?

The general rate would, of course, go on, and would apply to that man for other purposes; it would not absolve him from his general share of the rate required for the payment of the great and general expenses, but it would take away from him the liability of coming in to repair two feet of wall and not doing it when he ought. I think that that abolition would be a good provision in any general Act for the administration of these large districts.

46. You have said much about sea walls; do you mean sea walls in their ordinary sense, or embankments high up a navigable river?

The case that I referred to was a great sea wall against the sea.

47. Then that does not apply to the case of fresh water floods?

Yes, the observation that I made would. I was illustrating it by a case that I know of, a large sea wall; but it would apply in the same way to ordinary small embankments and ditches upon an affluent into a main stream, no doubt, if you found that liability to exist.

48. What provisions would you recommend for the purpose of giving the necessary powers to either the Commissioners of Sewers or any other body to make the necessary works?

I think the noble Lord is referring to my almost previous answer.

49. To the whole of your examination. The result of your examination has been to show that, though there are universally very large powers on the statute book, yet by reason of ancient rights and private Acts, and other impediments, those powers do not operate. I wish to ask you in what way you would amend the law so that the intention of the Legislature might be carried out?

I have alluded to what I think may be an amendmeut of the Act relating to liability *ratione tenuræ*. As regards the large mass of private Acts, really I think they could not be reckoned up less than between 2,000 and 3,000. I should say it would be extremely advisable that there should be inserted in any general statute a power, which, I believe, has been inserted in certain Railway Acts, where the railway company has taken power to take a canal, and a reference has been enacted to the Board of Trade, and under that Act the Board of Trade says, "Has the necessity of keeping up this canal and navigation been proved to us as no longer existing." If that is proved to them I believe they have a power of saying, "Very well, we absolve this navigation company from keeping up the water for navigation purposes." I had been under the impression that there was a general power of that kind under some of the Canal and Navigation General Acts, but I am informed at the Board of Trade that I am wrong there, but that they think I should find such a power under some of the private Acts. Now, I think it would be a good thing to enact in a general Act some clause which would say, The navigation of this canal or small river

river being no longer required, the Board of Trade shall inquire into it, or the Inclosure Commissioners, or any other body you like to put it to, and say, we absolve this Navigation Company or Commissioners from keeping up their water.

50. Do you think that that of itself would sufficiently relieve the machinery?
I think it would help very much to it. That is only the general first large feature that I would give. Of course the consideration of the particular provisions of the clause might extend it further, or might render it more easy of application in various ways.

51. Would you wish to make Commissioners of Sewers more general, or to alter their composition, or their mode of appointment?
I have thought of that subject, and I must ask you to allow me to refer you to a map with reference to that. It is a very clear map; it is a map that was drawn for the Royal Sanitary Commission, and it exhibits very clearly the catchment basins of large districts. It has struck me as just possible that in order to ensure the existence of Commissioners of Sewers, and the supervision of the main outfalls of large arterial drainage districts, it would be a good thing that in each district of England where you have a large arterial outfall there should necessarily be formed in that district a permanent Commission whose duty it would be always to look after the main channel and outfall from that water-shed district down to the sea.

52. And with a view of only preventing floods, or also for navigation purposes?
Navigation purposes, of course, if it is a large river like the Humber or the Ouse, where you must not prevent the navigation; but with reference rather to arterial drainage, and assisting in keeping properly clear all the lands above and around it, and the affluents into it.

53. But that would rather increase floods than diminish them, would it not?
No. I want to have one body regularly established and always in existence who shall take charge of the one great channel which is from the centre of a district down to the sea. Let me illustrate it simply by one single case. Here is a large water-shed; take the River Severn there (*pointing to the Map*); it commences there, and runs down all the way there, and gets down to the Bristol Channel.

54. You would put the whole drainage area of the River Severn under one body?
The River Severn being the main arterial source of drainage, I would have a permanent body in the county always to look after it and its main outfall.

55. Would you give any powers of controlling the affluents of the Severn to that body?
I should propose rather to leave that to a district Board, smaller areas whenever it was found necessary by the parties to form it, or have their own district properly attended to.

56. Would you not then be in this condition, that though the Severn itself might keep very carefully within its banks, the affluent at its mouth might run over them, and your Commission of Sewers would be powerless?
You might extend their power then to say that they should also have jurisdiction to look not only to the main outfall at the sea, but to the outfall at each affluent into the great main course of drainage.

57. Lord *Ker.*] What is the objection to bringing the whole of the district under one body of Commissioners?
I do not know that there would be any objection particularly to that, but you would come to a very large tract of country, and you would come to a very large body of men, and you will have to take very great care that you frame your Act in the best way to meet all these purposes of the different navigations and other things. It may be well to do it, but you may get your districts in that way so very large. What I wanted rather to do was to establish, if possible, one body that would look over the main great channel of water which serves for the whole of a district of a water-shed.

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58. *Chairman.*] Is not the evil of the existing system that there is divided power and responsibility, and would you not perpetuate the evil?

No, I do not think it would necessarily do that. I should have a permanent body, whose duty it would be always to look after that main channel, call it the Severn, for example's sake.

59. And what power would you give to that body?

They should have power, first of all, with reference to the main outfall or outfalls, whatever they are, at the sea, at the mouth; then, if necessary, they should have power and control over the mills, weirs, and dams.

60. That must be on the affluents as well as on the main stream?

Yes, it must be, of course. Then as they go up the river and meet with an obstruction at the mouth of some affluent, they should have power to remove that; it is in their water.

61. They should have power to cleanse the bed of the river?

To cleanse the bed of that river and to see that no bar shall exist in their river that prevents the affluent from coming down into it and going away.

62. And also power to preserve the river from solid pollution?

I do not know that I should like to mix that up with the agricultural arterial drainage; it might be brought in, perhaps, but that is rather a bigger thing. I have not looked at it in that view; I have excluded that, because we have nothing to do with the sewage question.

63. I say solid pollution, so as to prevent accumulations on the bed of the river; cinders, for instance?

Anything of that sort, that they might meet at the junction of the affluent they should have power to remove.

64. Not only to remove it, but to prevent its being thrown in?

Perhaps so. There is power under the Land Drainage Act of 1861, sec. 58, for Commissioners of Sewers to prevent people throwing stuff into a river, sewage and noisome matters; but then it is limited, and says that they shall not interfere with any rights which previously existed; but I do not know that that has ever been pressed.

65. What powers would you give them over the banks?

As regards the main river, I would give them power to keep up its banks, and, if necessary, raise them.

66. Those operations would cost money; what power would you give them of obtaining money?

I should rate the district deriving advantage or averting damage by the works of this one main body.

67. Then you would rate the lower part of the river for making banks in the higher, or for clearing the stream in the higher?

But then that would be in proportion to what benefit they receive or damage they avert. If no damage was averted, or if they showed that they got no benefit, then, under the existing law, they would not be liable to be rated. If I went down and said, "Now this district has derived benefit we will say to the extent of 100 *l.* a year," I should charge them for that; but if they are able to prove, on appeal, that they have not derived any benefit at all, this rate would be quashed.

68. You have spoken much of clearing the outfall at the sea; clearly it is not those who are in the immediate neighbourhood of the outfall at the sea who gain the exclusive benefit of that operation, but it extends some way up?

It extends some way up.

69. Would you extend your taxation in proportion to the benefit?

Yes.

70. And to whom would you leave the determination of that fact?

I think the appeal at present is this: the Court of Sewers makes the rate, and they deposit their assessment, and then it goes by appeal, I think, to the court of quarter sessions, and if it is a matter of a technical or scientific character it may

may be referred by the justices to arbitration, sec. 48 of Land Drainage Act, 1861.

71. And that you would retain?
I think I should.

72. Lord *Penrhyn.*] With regard to the outfalls of rivers that flow into the sea, whom would you tax for those works that are actually below high water-mark; take the Dee, and take various other rivers where there are sea walls below the actual river; you would actually be on the banks of the estuary; would you tax the parishes there, or would you go to the Office of Woods for the taxation there, because the Crown claims everything below high-water mark?
There, certainly, I am met with a difficulty that most of the outfalls of these great arterial courses of water to the sea are under the provisions of some Act or other; not one of them, probably, that has not got its own Act.

73. But any General Act that comes in, I suppose, would come under that, would it not, in several cases?
I should have thought that the object of establishing this one body for the outfall might have been provided for in the General Act in such a way as would not clash with or interfere with those who have now the control of the discharge of the outfalls, and piers, and harbours at the mouth of the sea. I know it is a very big thing to attempt to do, but it crossed my mind in thinking over these matters. There is one other thing that I would suggest; I was asked about any extension of powers or remedies. Under the Land Drainage Act of 1861 there is a power for Commissioners of Sewers, whether issued under that Act or under the Crown, and for District Drainage Boards who adjoin, to work as between themselves by consent, so that they may, by agreement, remove any difficulties that are found to exist in carrying out their operations after they have been severally established.

74. *Chairman.*] Is it your experience of such bodies that they very readily come to such agreements?
No, I do not think they do; and I think, perhaps, it might be possible to give an extension of that, so that they might work together a little more harmoniously; that if such a case occurs, and they are not able to come to an agreement amongst themselves to do it, and it is shown to be a proper thing for the public advantage of the district to be done, there should be some Board to which they should be able to refer the matter in difference, which Board would say, "You must make this agreement, or we will make it for you." I think that might be a useful power as between these smaller bodies that now exist, and who do not come in to those arrangements which, I think, would be properly contemplated by such an extension of power, and are contemplated under the existing law.

75. Earl of *Sandwich.*] I understand then, from the evidence you have given to-day, that you think from the great number of Acts, 2,000 or 3,000 Acts, which refer to these rivers, it would be impossible for any body of Conservators to act upon those 2,000 or 3,000 Acts; they require consolidation and amendment?
Certainly, at present, no body of Commissioners established could go and interfere with those existing Acts of Parliament.

76. But you are aware that Acts of Parliament have been passed subsequently to those previous Acts which have approved those previous Acts?
Where the Private Acts are done away with it is no longer a matter of encumbrance.

77. You cannot interfere with the drainage of that river which is subject to that Private Act of Parliament?
No, we could not form a district out of that without the previous consent of that Commission of Sewers or Drainage Board established under that Private Act of Parliament.

78. You would recommend, then, a consolidation of Acts, one General Act, as far as that would be applicable to the drainage of the rivers?
Yes, I think so.

 79. You

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79. You would not act upon these 2,000 or 3,000 Acts?
No, it would be utterly impossible; and I only suggest that in such General Act you might appoint a Board which would enable you to say, "Well, we find that the old navigation powers and duties relating to this little affluent A. B. are no longer necessary, and therefore we will absolve the Navigation Board over A. B. from the duty to keep up this water." At present they have no strict right to give up the duty; perhaps they do; perhaps it has fallen out of use.

80. You require new Acts altogether to consolidate these previous Acts, to improve them before you can adapt them to the drainage of the rivers?
Yes.

81. And after that was done you would have a permanent Commission appointed to watch over the rivers from the source to their exit in the sea?
Yes, that was one of the propositions that I ventured to mention which I had thought of as one of the ways out of the difficulties of this big subject.

82. Of course there must be sub-committees to manage certain parts of the river presided over by this general Board?
Certainly.

83. Now, with regard to the question of my noble friend about the tide, you are aware that there are locks placed at certain intervals to prevent the tide rising above a certain height?
Yes; I should like to say in explanation that I find great difficulties expressed in regard to dealing with large districts of country, which have been subject to very serious floodings in the last two years; I find that parties meet in the country, and then there is opposition as to what ought to be done, or what can be done, and difficulties crop up; and in thinking over the matter it seemed to me that there was one line which might be followed, so far as regards keeping the main source of outfall for a district always in good order. Take the Ouse, or the Severn, or the Derwent, or any river that you chose to name; let that and its outfalls, and its points of junction with affluents, be under one county Board, established for looking after banks, locks, and bars, and all things about that river; so that that one main shall always be kept clear and right; and that if other districts wished to avail themselves of a better means of draining their lands arterially, they would find a main channel ready to receive them upon proper terms, which they would make with the main arterial Board.

84. Marquess of *Ripon.*] You, I think, proposed that there should be one General Act of Parliament passed which should establish upon an uniform principle certain Boards, whatever they are to be called, in various large districts; do you propose to supersede by that General Act all the existing Local Acts and all the existing authorities that have the management of rivers under those Acts?
Not by one Act. My proposition only went to this, to put into that General Act a clause which would enable a separate and distinct Board, say the Board of Trade, to exercise a jurisdiction and say, "The object contemplated by such and such a Local Act is no longer necessary, therefore we absolve you." Virtually it amounts to a repeal of a certain Private Act under which we will say a Drainage Board is bound to keep up the water in a certain river.

85. Do you propose to do that on the application of the Local Drainage Board, or without their consent?
I should give the power of application in the first instance to the Local Drainage Board or Commissioners of Sewers, whatever they were; then they would make application to the Navigation Authority or other Board A. B., established under a Local Act; they might agree with them, and then no trouble would arise; they then would be obliged to go to the Board of Trade or some other Board to have that legal consent given after inquiry made, showing that it was no longer necessary for the purpose of the navigation of that river to keep up the water.

86. But you know there are many districts in which there are no Commissioners of Sewers, in which the management of the river, or a great part of the river,

river, is in the hands of Commissioners appointed by a local Act, not in the technical sense of the word Commissioners of Sewers at all, who exercise their powers under special local Acts?

Yes.

87. Do you propose to supersede them by establishing a new Board on a new principle under a general Act of Parliament, similar for each district in the country?

It would have the effect, undoubtedly, of superseding them if upon inquiry it was found right to give them that power.

88. To give whom that power?

To give the power to the Local Act Commissioners or Board to cease performing certain duties which are now upon it, and which it is proved are no longer necessary to be performed. My proposition is not a power under a general Act to any Commissioners of Sewers to go in at once and say, "We will do this"; but seeing that it would be beneficial to do it, there should be a court of some kind to which they can refer, and which can enable them (as it is under some of the Railway Acts) to free the local people from the liability and duty now cast upon them under their private Act.

89. Then do you propose that the Board of Trade should do that wherever they think fit?

No.

90. Or upon any local application?

Upon application from the Commissioners of Sewers that may be established for a district.

91. Do you propose to establish Commissioners of Sewers under that General Act everywhere, in every water-shed?

That was one of my propositions.

92. Whether they exist or not now?

Yes.

93. Where the river is at present under the management of a local board, they not being Commissioners of Sewers, do you propose to establish over their heads, as it were, Commissioners of Sewers under that General Act?

If there is a body that already performs all those duties with reference to the great arterial stream of water, it could not be necessary to do it, certainly not. I have been misunderstanding the noble Lord's question, I am afraid.

94. I want to know whether you mean to make your Act general, covering every water-shed, and establishing in the case of ordinary rivers a new body to be called the Commissioners of Sewers, or whatever you may call them, which would supersede all existing jurisdictions?

Certainly not, except in cases where it was proved that there was no such existing body; and the formation of such a body was also found likely to be beneficial or required.

95. Can you tell me whether Commissioners of Sewers, acting under the Act of 1861, have any borrowing powers now?

Yes.

96. They can mortgage their rates, can they?

Yes, they can mortgage their rates for a period not exceeding 30 years.

97. Lord *Sandwich.*] But that is for drainage purposes for land, agricultural drainage?

Yes.

98. Marquess of *Ripon.*] I am speaking of works in connection with the rivers?

Yes, works in connection with the rivers.

99. Can they borrow money to make a new outfall, for instance?

Yes, if that was part of their scheme for the drainage of their district, and the works, and the amount had been duly given notice of and approved by the parties; when that is passed, they would be able to mortgage their rates.

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100. Do they require the sanction of any Government Department for doing that?

They require our sanction.

101. And do you hear opposition if there is any opposition?

If there is any opposition we should, of course, immediately call the parties before us.

102. You are aware that works of that kind, especially in connection with the outfall, may be very expensive, and involve a very large amount of money?

Yes, they may involve a very large amount of money.

103. There was one thing which you did not state with respect to the boards that you propose to establish generally, which was, how they should be appointed. The noble Lord in the chair, I think, was going to ask you the question, but I think did not ask the question?

I beg the noble Lord's pardon if I did not answer the question. In the first instance, I should say that the members of the board should be appointed by the authority that is to issue the commission; that in the first instance they should name the board there in that deed, or whatever it is, just as we, in recommending to the Crown the issue of a Commission of Sewers under the Act of 1861, name the first board; so we do in the drainage districts, and in the drainage districts, after one year, it becomes an elected body. So, to follow the example of the Thames Valley Drainage Act, which is a very good Act, the principal body of Commissioners are all nominated in the Act at first to carry out a certain portion; that portion having been completed, those people ceased under the Act. Whether they have been re-elected or re-appointed or not I am not able to say; but now that principal body of Commissioners exercise their powers, not as nominated in the Act, but as provided for by subsequent sections of the Act. I will tell you how they are nominated now. Each district of that large Thames Valley sends a member or two of its own Board to sit upon the Board of the General Commissioners of the Thames Valley Drainage Act.

104. But you would propose in some shape or other to introduce the elective principle?

I believe that has been found most advantageous, certainly in the elective drainage districts; they like it better; there is an opportunity of changing advice, and council, and plans, which does not so necessarily follow upon the other system. I do not know that you get more wisdom in the one than in the other, but you get a change if you do want it.

105. You give more satisfaction to people who have to pay rates, if they have a voice in the management?

Yes, no doubt.

106. Lord *Winmarleigh.*] Are you aware of the circumstances of the River Mersey at all?

No.

107. There, by a private Act, a conservancy power has been granted to destroy all embankments for the purpose of keeping up the scouring power at the mouth of the river; would you allow the Commissioners that you recommend to interfere with that?

No, not at all.

108. The object of the conservancy in that case, is to keep the largest flow of water in the upper part of the stream, and keep the part at the mouth of the river open?

In the circumstances connected with each great source, I think the principal channel of a big district would have undoubtedly to be carefully considered before you issued that; and moreover, all such cases would be required to be pointed out and provided for in any section of an Act which gives a power to establish such a board anywhere where it was really wanted.

109. You do not propose to interfere in any way with an Act of that kind?

No; the consequences are far too large for that. Our operations under these Acts

Acts are confined to agricultural arterial drainage. I can only view the subject in that way; I have no experience of the other matter.

110. Even if these powers where given did interfere with the agricultural drainage you would not give power to any other body to interfere with that?

Certainly not; the circumstances of the particular case you give would require a very grave consideration before you extended that power.

111. Lord *Meldrum.*] You are aware that on some rivers, although the navigation is given up, the present Commissioners keep up the navigation for the mills; would not the millowners be very difficult people to deal with?

I believe the millowners are always very difficult people to deal with; and the strongest power I know with reference to millowners is in the Act of Henry the Eighth, where you may take down anything.

112. On the River Nene, from Peterborough to Northampton, there is very little navigation; the board you would propose to appoint would have to deal with the millowners if they did away with the navigation, which is merely kept up at the present moment for the benefit of the mills; the outfalls are kept clean for the benefit of the millowners; they would be very difficult to deal with, would they not?

Yes, it is a question of compensation. That is a big element of consideration, no doubt. It is one of the great difficulties all through, that water power of mills.

113. The board that you would appoint would necessarily try and get the river improved by giving it a clean cut through, taking away the lock; you would say, "There is no use keeping up the navigation;" and then the first thing to do would be to take away the lock; and the first element to oppose that would be the millowners?

You must not interfere with the millowners improperly or unnecessarily; let them be brought in and considered, of course.

114. You have taken that into consideration?

I have considered that. I know the subject is surrounded with immense difficulties; so the whole thing is; the more you go into it the bigger it is in every detail and corner and turning.

115. Lord *Ker.*] Would there be any rating powers for compensating millowners?

You would make the powers, of course.

116. There is no power of assessment anywhere for that purpose then?

I should think that there must be under some of the sanitary Acts powers for the removal of mills for sewerage, but I am not acquainted with them.

117. With regard to the General Act, you would only interfere with the Private Acts so far as relieving them from present liabilities; you would not take away any of their other powers?

I do not see any other way of dealing with these innumerable Private Acts under the different classes. There are canals, navigations, railways, harbours, docks, quays, fisheries,; and then you come to improvement commissioners mentioned in the Act of 1861. We were very much puzzled to know what improvement commissioners were meant. We took the opinion of counsel upon it, and we were advised that by improvement commissioners were meant all public bodies who had the duty cast on them of carrying out local improvements including drainage. Therefore, they said, wherever you have a body of improvement commissioners existing, we do not think it would be safe for you to proceed to form a commission of sewers, or drainage district, by the Act of 1861, without you previously had their consent.

118. But would it much facilitate the working of a General Act if these Private Acts were only to be relieved from certain liabilities?

I should relieve the authority under that Private Act from the duty now existing upon it, the performance of which duty is shown to be no longer necessary under the circumstances which now attend it. That is my object; I would not repeal the total thing.

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119. You are still met by the two or three thousand Acts?
I am, and they two or three thousand Acts of all kinds under what are called the Local Acts.

120. Which would still interfere with the working of the General Act?
Yes, they would still.

121. You do not see your way to recommend the supersession of all these Acts?
It is utterly impossible; no man could ever ascertain, probably, what their contents are; but I consider it quite possible, in drawing a General Act, to give that power of appealing to somebody, and to enable the unnecessary burthen or duty to be taken away when it is proved to them. Probably, if I had had time to look into it, I would have procured an instance or two of similar powers given under some particular Railway Acts with reference to the canals. I am informed there are some few, but there is not an Act of general bearing.

122. Then, with reference to what you propose to call the main arterial Board, would you propose to put under the direction of the main arterial Board anybody that might have the direction of the affluents?
So far as regards the great main channel of the water into which all the affluents from the water-shed come down, I should say that they should be obliged to conform to, and state their proposition to, the main Board that has charge of the great channel, because the big channel I want preserved for the whole of the water-shed.

123. Earl *Stanhope.*] Have these Commissioners of Sewers power to stop at least two sources of floods, namely, the multiplication of mills by private owners on rivers, that is one point; and also the neglect of opening lock-gates at the time of floods?
No, I do not think there is any power whatever of that kind.

124. That comes under the Conservancy Boards?
I should think that comes under the Conservancy Boards.

125. That you cannot speak about?
No, but I do not at all recollect that the Commissioners of Sewers or Drainage District Boards have any power to prevent the erection of any new mills.

126. I understand that on the Thames, very often when the floods come, some of the lock-keepers neglect to open the locks and let away the water, and the consequence is that the river overflows the banks, and by judicious care that might be prevented?
I am not aware that under the Commissioners of Sewers Acts, so far as we administer them, or have to deal with them, such Commissioners have power so to act, unless it be under some of those enormous powers which appear to be almost everything under the General Act of Henry the Eighth, but nobody could venture, I think, to put those powers in force now. In fact, they have been rather narrowed by the subsequent Acts, or if you like to say so, defined more than they were by the Act of Henry the Eighth.

127. I do not think you clearly explained what power the Board of Trade should have with regard to the closing of a canal; you said that occasionally a canal should be closed for navigation purposes by the Board of Trade when they thought it unnecessary for those purposes?
What I meant was this; there is a canal established under an old Act of Parliament, we will say, and combined with that a navigation; that is found to be no longer necessary; it is superseded by the railway; under some Acts they have a power to take that canal, and many railways are made on the beds of canals now; but I believe in some of the Acts the Board of Trade has power to say, or to arbitrate, whether it is necessary for that Company or Commissioners, or District Board, or Drainage or Navigation Board, to keep up its water or not. The Railway Company, as I understand, say, It is no longer necessary to keep up the water 12 feet high, we will suppose; there is no navigation that goes along there now; it is all carried by railway; give us leave to call upon them to diminish it, or rather give that Drainage or Navigation Board a release from their liability to keep up that water to 12 feet.

128. But

128. But not to abolish the canal altogether, and leave it high and dry?
No, not to abolish the canal altogether; I do not know that that would be necessary.

129. It might be disadvantageous, might it not; storage of water is one of the points that we have to consider; if the canal were to run dry it would be disadvantageous in that respect?
Yes, the storage of water undoubtedly is one of the things that I should strongly recommend to the attention of any body, either Committee, or Commission, or office, that is going to provide any further legislation upon the subject of Agricultural Commissions of Sewers and Drainage District Boards. I should say most decidedly you should give them a power for that, for the storage of water for domestic use in villages, and for irrigation and for cattle. Of course that leads me to another very big question, namely, how far shall towns be rated or brought in.

130. Might I ask you this further question; if you could state very briefly to the Committee any recommendations that occur to you as to that point of storage of water?
My own impression upon that is, that when you have come to have a district under a Commission of Sewers or Drainage District Board, they should have that power of storage, and that they should have the power to put, and it would be advisable that they should put their reservoirs, not necessarily in one place, but in various parts of the district, so as to avoid the very great expense and risk and danger attending the making one great reservoir in one high district; but I should take into account the conveniences of the district generally, and put perhaps a reservoir here, and another reservoir there, according as it might be found convenient for the accession of water to any particular locality.

131. And would you put those under the District Board that you have already recommended should be created?
No, I should put the power of making those reservoirs, I think, rather under the smaller drainage districts or boards, that would be established accessory to the great main body that I have spoken of.

132. Lord *Vernon.*] Have you any schedule of the mileage of each river, which is the outfall of a particular water-shed, giving the mileage also of the tributaries flowing into it, up to the source of each river?
I have got here a map furnished to the Salmon Fisheries Commission, I think it was; it was prepared by the Ordnance Survey, and I have no doubt it is accurate, but it is printed in very small letters, and is not very easily read or used; but I have no doubt it is a very good and perfect map of its kind. There is a table of reference on a larger scale than I have got, which, I believe, renders this map very much more useful.

133. My object is to find out what mileage of river bank there is to each water-shed in England; there is no table showing that, is there?
No, there would be no table showing that. That could only be ascertained really by local inquiry, I should think. I do not think you could possibly ascertain that otherwise. This map (*pointing to it*) and the columns give you the length of the main channel and the length, I believe, of the principal affluents.

134. Are you able to say what area of land is drained by each of the main rivers; is there any list showing that?
My impression is that there is a list which is attached to this map, but I have not got it.

135. What is that map?
This is a map that accompanied the Report on the Salmon Fisheries of England and Wales, dated February 1861. This other map (*producing another map*) is of a later date, 1862; it is for a totally different purpose. If the noble Lord was wanting that, I can recommend him a little book which, I believe, is very accurate and very good, "Notes on River Basins" (*handing the book to his Lordship*).

136. Lord *Somerton.*] I understood you to suggest some time ago the

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appointment of what you would call County Boards to superintend the outfall of each large river?

Yes.

137. Now, supposing (it is an extreme case I know, but I happen to have a case in my mind) that there was a river which had originally a tolerably good mouth, and from some accidental circumstance that mouth had got choked or silted up, and the river had formed another and very inferior mouth at some distance off, you of course would give that Board power to deal with that matter and to re-open the old mouth?

Yes.

138. Then you would give them power, of course, to execute any works between high and low water mark; for a great deal of the work would have to be done probably between high and low water mark?

Yes, it might.

139. In this case, I am thinking, nearly the whole of the work would have to be done between high and low water mark; you would be obliged to confer powers upon them to enable them to do that?

Yes, I think so, because I want that Board to be one great supervising Board to keep the main channel open for the whole of the district. The noble Lord said to me just now that I proposed a County Board. I do not necessarily confine it to the county; it may run into one or two counties. I ought to have said rather not County Board but a large District Board formed from a large district.

140. Then the expense of it would, in all probability, be very large indeed, and that you would apportion between all those parts of the district which you imagine to be more or less benefited by the alteration?

It might be very expensive; *non constat* that it would be.

141. But supposing it would, you would apportion it between the whole district according to the benefit derived?

According to the benefit derived, or damage averted.

142. How would you arrive at that?

There might be a court of valuators to go to work and ascertain it, as they must do now. What principles they would be guided by, or are guided by, in such a matter, I do not think I could undertake to explain; but those professional men would know the basis on which they proceeded and how they divided it.

143. Lord *Penrhyn.*] Did you mean to estimate the various proportions that were contributed by different districts, or do you mean the proportion in the rating of the different individuals in those districts. I understood your plan was that there should be valuers to settle the proportion to be paid in different districts by the different parts of that great water-shed?

In the first instance, it would be decidedly the better plan to take the district, and then, having taken the district, to apportion the amount put upon the district amongst the people of that district.

144. In some cases, people would be deprived of an advantage by having no floods, because there are many meadows on the borders of the great rivers where floods are the means by which they obtain their crops?

Yes, that is another difficulty; and there is the great difficulty which again arises on some occasions from their being unable to take any steps in a district for preventing the waters coming down upon their lands. That again is one of the things to consider in regard to what may be done to prevent the water coming down so rapidly as it now does from high districts. A great deal of land would be deprived of its crops, but that might be provided for under distinct powers of irrigation, if it were necessary first to have taken means to prevent sudden serious flooding.

145. Marquess of *Ripon.*] Was there a Bill upon this subject prepared at the Home Office when Sir George Lewis was Secretary of State?

There was.

146. Would

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146. Would it be possible for the Committee to obtain a copy of that Bill?
I have a copy of the Bill here in my box, in my own handwriting. I can put it in to the Committee, if they like; but the Bill, though drafted by my colleagues and myself, and sent to the Home Office, was never introduced into the Houses of Parliament, and I do not know, therefore, and I will not answer for it strictly, whether the copy that I have got here is the absolute last draft form of the Bill as we sent in to the Home Office. I believe it to be so.

147. *Chairman.*] Will you put that in?
Yes. In putting this in, allow me to explain how it arose. There had been some difficulties created about arterial drainage, and Sir George Cornewall Lewis had been pressed rather by some parties to frame a general measure, and he sent for me early in 1861, and I remember his saying to me, "Can you prepare me a general Bill?" I said, "Well, it is a short time to do it in." He said, "Well, take three Acts," the Irish General Act, as it then existed, I think it was the Act of 1842 or 1846, I forget which; and then he put into my hands, also, the draft of a Bill which had been introduced into the House of Lords in 1852 by the then Lord Carlisle, and the draft of a Bill which had passed the House of Commons in 1854 upon the introduction of Mr. Ker Seymer, but which did not pass the House of Lords; and he put those three Bills into my hands, and requested myself and my colleagues to draft a Bill based upon those three; and this is, I believe, as correct a copy as I have got. I dare say that at the Home Office there would be a copy of the Bill less marked and inter-written and interleaved than this copy of mine is; but I am quite willing to hand it in to the Committee, if your Lordship thinks it will be any use to them in considering the matter (*handing it in*). There is another paper that I have brought down, which I will put in, which is a Report made by Mr. Grantham on the Floods in Somersetshire in 1872 and 1873. He was directed by the Home Office to go down and make a report upon the subject of the great floods that had done serious injury in Somersetshire, and he went into the thing at very considerable length, and finally drew up this report, which was presented to the House of Commons. I did not know whether the Committee would like to refer to it, but I brought it down to put it in (*handing it in*). I do not know whether your Lordships would care to have a copy, which I have brought down with me, for easy reference of the Thames Valley Drainage Act of 1871, and the Amendment Act of 1874. It is really the first of the great Acts that has been passed upon a big district from one central body of Commissioners, with districts formed in and out of it all through.

148. That is a Local Act, is it not?
Yes, it is a Local Act; but it is a very big one, and it is a model one. There has not been very much done under it at present, but the districts are formed, and they are proceeding to consider their great works now; and I brought those Acts down if the Committee care to have them to refer to.

The Witness is directed to withdraw.

MR. ROBERT RAWLINSON, C.B., is called in; and Examined, as follows:

Mr. *R. Rawlinson*, C.B.

149. *Chairman.*] YOU are a Civil Engineer, and Chief Inspector under the Public Health Act?
Yes.

150. You were Chairman of the River Pollution Commission from 1865 to 1868?
I was.

151. You took evidence and reported upon several rivers?
The River Thames, the River Lee, and the Rivers Aire and Calder, and made preliminary examinations into the Ribble and Mersey basin, but did not report.

152. In the course of taking that evidence you, I presume, acquired some knowledge of the powers which exist for the preventing floods, and of the reasons which prevent those powers from operating?

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In the River Thames Report we have given the details of the Conservancy powers existing at the time of our inquiry, and the present Conservancy governing power is sketched out in the same report, which suggestions were adopted by Parliament, and the Act is now the governing power for the Thames district, the main river and three miles on each side of the same.

153. You have had an opportunity of observing the extent of the floods which occur on these various rivers?

Yes, we took evidence as to the prevalence of floods in the Thames valley; I myself have seen the river under flood; for instance, I have seen the water up into the suburbs of Oxford burying fences in the fields around Oxford, and putting, in fact, a large area of the country there under water, and so on, down to below Reading.

154. Did you acquire any knowledge of the extent of the damage that these floods caused?

There is evidence to that effect in the report. I have not abstracted it. In some instances we had evidence that the floods damaged the land. In other instances we had evidence that the floods were considered beneficial; and I remember one explanation given, namely, that where the water remained stagnant upon the land for any length of time it was said to be injurious to vegetation, but where the water was moving, although it remained upon the surface quite as long as in the other case, it did not injure the vegetation, did not kill the grass. That evidence was given; the philosophy of it I do not, however, understand.

155. There was loss besides, I suppose, from the destruction of hedges, buildings, roads, and other things; bridges, for instance?

I do not know that during the period that my attention was directed to the Thames, any injury of that kind occurred. In the Aire and Calder valley, during the time of our inquiry, an enormous flood occurred which was said on one side to have destroyed a million's worth of property, and in no instance did I hear it estimated at less than half a million.

156. Unseasonable floods, floods that happen in the spring or summer of the year, would destroy a much larger amount of property, would they not, than in the winter?

Floods usually occur in the autumn; the order of the seasons in this country ranging this way: spring is the dryest season; autumn is the wettest season upon an average of years; April or March the dryest months, and October the wettest. Of course in October, November, and December, rains prevail, but taking the great law of meteorology in this country, the dryest season is spring, the wettest is autumn.

157. In none of the inquiries which you conducted were there cases of floods occurring in the spring or summer?

I do not remember. Of course I know that there are summer floods, but the great falls of rain generally take place in the autumn.

158. Lord *Meldrum.*] The highest flood ever known was a July flood, the year before last, was it not?

Very probably it might have been, but those are exceptional.

159. *Chairman.*] There was a great destruction of hay from a summer flood a few years ago, was there not?

I believe there was. The reason that floods are not so destructive in the summer as they are in the autumn is this, before you can have anything like a flood after a period of dry weather, you must have continuous rain for several weeks or months. For instance, a heavy fall of rain, as much as 2½ inches in the week may occur in summer, which is really a very heavy fall for a week, and yet it will cause no floods in the adjoining rivers; the surface of the earth is so dried and so heated that absorption and re-evaporation drives off nearly the whole of the water. You must have water flowing upon water to produce a flood; you must have the earth saturated up to the surface before you get a damaging flood.

160. The great extension of drainage has very much increased the suddenness and violence of floods, has it not?

I do

I do not believe that either drainage or cultivation affect floods in any appreciable degree.

161. You think that the floods were as bad before drainage as since?

And as bad since as before. I think that land drainage and land cultivation modify the flow of water during ordinary seasons; they also modify the climate during ordinary seasons; but they have nothing whatever to say either to excessive drought, or to excessive rainfall.

162. That the water does not flow more rapidly off the land when it is drained than when it is not drained?

To have a damaging flood, the sub-soil must be saturated up to the surface, and whether that sub-soil is drained or undrained, if it is saturated up to the surface, the volume of water falling on that surface comes off, and the draining or interfering with the land makes no difference to the volume of water that will fall upon it, and the volume that will flow off.

163. That is equally true, is it, whatever the level of the land may be?

Equally true, whether it is a mountain slope or a sandy sub-soil. I have evidence that large areas of almost sand have given off seven-eighths of the entire volume of water falling upon the surface, and you certainly could not get much more off a slated roof.

164. What remedies would you propose for the prevention of floods, or do you believe that any are available?

Each case would have to be considered in itself; but speaking broadly, the prime remedy, in my opinion, must be embanking. I say "must," because any other remedy would be far more costly.

165. The tendency of embanking without any other measure would be gradually to raise the bed of the stream, would it not?

It would, if other measures were not taken to deepen that stream, and if you do not stop the dreadful abuses which have taken place for the last century, and which have increased and culminated at the present time, when there are millions of tons of solids recklessly thrown into the rivers to be taken down by the floods, deposited in the lower reaches of the rivers, and so gradually raising their beds, and causing the great damage which now occurs. Some of the rivers in Yorkshire and Lancashire have had their beds raised from 7 to 10 feet.

166. Has that been estimated, or has it been ascertained by measurement?

It has been ascertained by measurement; the figures are in the Report; and we have gauged bridges, water-ways, culverts, through some of which a waggon could have gone, and now a dog could scarcely crawl through.

167. But now, supposing you arrested the further progress of the evil, there would be no means of lowering the bed of the river again?

None, except by excavation and dredging.

168. Which would be a very costly remedy?

A very costly remedy.

169. Therefore your opinion is, that in all those cases it would be better to raise the bank than to dredge the stream; is that so?

I could not say in all cases. I say, speaking broadly, taking all the rivers I am acquainted with, if I put one remedy first as the prime remedy, embanking would be the one; but there are exceptional cases where there is property on either side that would not permit of embanking, and you must then resort to the more expensive mode. Take the Aire and Calder, where there are manufactories of all kinds studding the river from near its source to near its estuary; there are plenty of places where you could not embank.

170. Is not embankment difficult where there are no waterproof soils within reach?

No, not necessarily; I know of no ordinary case where it is so. For instance, a porous and gravelly soil can be banked; and although the water would rise gradually in the subsoil, a flood is so evanescent, that is to say, an excessive flood, that the water would be down again before there would have been any appearance of water on the surface. Take this case, for instance, which is a good example; the suburbs of the city of Carlisle; below the city there is a considerable area of gravelly alluvium, which is embanked from the river; it is

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so porous that the sewage of Carlisle, without any under drainage, has been pumped on it more or less for about 20 years, and that disappears; you see no more of it. Now the River Eden rises outside those embankments, sometimes 14 and 15 feet above that surface, which is in direct communication, of course, with the subsoil; but in no instance have I known any appearance of water rising through that subsoil from the river. If the river remained in flood for two or three months, I have no doubt it would, but it is up and down in the course of a few hours, or at the most days.

171. Would you trust at all to impounding the water as a means of arresting floods?

Impound water for any purpose, but certainly never dream that you will arrest excessive floods by impounding, that is a perfect fallacy.

172. You never could do it in sufficient quantities, you think?

Never. The fall of rain which occasions an excessive flood is so enormous in volume, and so beyond any capacity that you could make reservoirs, that I do not think you could obtain ease from that source. For instance, take the Lake districts where you have natural reservoirs, as you may call them, of a very much larger extent than any you can hope to make artificially; Lake Windermere, for instance, and a drainage area very much smaller than the drainage area of our large rivers; Windermere rises from 12 to 14 feet vertical in flood, and its great outlet is delivering the water as fast as it can flow down. Now, if you were to attempt to impound the water coming from that area, several Windermeres might not do it to prevent flooding the district below.

173. Do you look upon locks and mills as a serious aggravation to floods?

They are, necessarily in a degree an aggravation, though not so serious as many imagine.

174. Could the evil of them be remedied by widening the weirs, or is it hopeless to do so without lowering the level?

You can do very little to remedy excessive floods by interfering with locks and weirs. If you were to remove them bodily away, of course the water could flow more freely at those points; but there are other points of the river which are now liable to be flooded that would be flooded, notwithstanding. The effect of a weir is simply to create a pond above it; that pond only affects that portion of the river through which it extends, and the water coming over the weir raises the river below it in flood, and the flood would do so if you had no weir there. Weirs and locks simply affect that portion of the stream to the extent that the pond reaches, and it is never very much; in extreme cases, say a few miles. [A flood flowing over a weir which has, say ten feet of fall in ordinary periods. As the water rises one inch upon the weir, it rises one foot in the pond below, so that a rise of 11 inches on the weir will level the pond below to one common surface flood line.]

175. As much as that?

Yes.

176. And that could not be met by any side streams?

A side stream must be so enormous to meet it that, in fact, it must be a new river.

177. Earl *Stanhope*.] As regards lock-gates, do not you think floods could be diminished by opening locking gates in time of flood?

Yes; you would diminish the flood there at that particular point. For instance, you could relieve Oxford by taking away the weirs, and discharging the floods through the lock-gates; but woe be to the places immediately below; you would improve Oxford at the expense of somebody below.

178. *Chairman*.] Supposing the lock-gates are opened early enough, the places down below would have time to get rid of the superfluous water, would they not?

No, not if the flood continued for some days.

179. Then are the locks any permanent relief to the places immediately below them; a permanent security?

I do not know that they are, because if you have seen, for instance, the Thames in flood, the weir and the lock are absolutely almost lost; you have a weir that may have a fall of 8 or 10 feet, but in flood you scarcely see it; the surface is almost a level line; the river is full up, and the reach below is filled with the

flood

flood water, so that the weir is absolutely almost lost to sight; you can hardly see where it is, and it must be manifest under those conditions that, assuming that that weir were away, you would not diminish the volume of water; you would simply affect the river at that point; excepting you embank or otherwise improve, you would diminish the head at that point, but raise it at some other point; you must have means to confine the water, as the volume of water that floods land is an infinitesimal fraction that you would have to shut off by an embankment, compared with the volume that is rolling down the river.

180. But if you confine the water strictly within the bed of the stream by embankments, would not a considerable portion of the deposit which the flood always leaves, be deposited at the bottom of the river?

Not much more than at present, because the silt that the river takes on to the side land simply consists of that which is in suspension; very fine mud in suspension. The active mischief that a river in flush is doing, is rolling down stones and sand, that remain in the channel. You rarely find the land on either side of the Thames covered with sand.

181. Therefore embankment would not in itself tend much to raise the bed of the stream?

Certainly not; that is not in such a proportion as many persons would imagine, because the velocity of water is quickened very much by increase of depth.

182. Then that will confine practically your view of the remedies which are available to an increase of embankments; what legal machinery would you advise, or have you any to advise for the purpose of facilitating the creation of those embankments?

My conception of the legal machinery to deal efficiently with rivers is this, that each large river or water-shed area similar to the Thames should be put under one jurisdiction; that smaller areas (as there are many in Great Britain) should be grouped and put under local jurisdiction; that as there must be local taxation, there must also be local representation. What is to be done with private Acts, that, of course, I have not taken into account; but they would have to come in under the regulations of any general conservancy board that would be established. Then in the manufacturing districts the interests there are so complicated that I sketched out in the Aire and Calder Report my view of an arrangement for conservancy boards there; to sub-divide those rivers into small local conservancy boards, like urban local boards, the local management being in the principal town within that particular area, the whole of them being under one superior conservancy board for the entire area, the entire of the water-shed being under a main conservancy board, having its seat in London; and that you should not permit rivers to be tampered with in any way. I would deprive every millowner of the right of pulling down or erecting, or altering, or meddling with the foreshore of a river in any way until plans had been submitted first to the local board, and if there were any grievance or dispute, giving him power of appeal to the general board if he felt aggrieved at anything the local board might do or object to do.

183. What liabilities of taxation would you establish; who should pay for these embankments?

The parties who were to be benefited. If rivers are to be embanked to improve agricultural property, the agricultural property on the two sides should be taxed; and if they are to be embanked to improve mill and house property or towns, then the parties who are specially interested should be taxed.

184. But water breaking through at one point will flood a large extent of country; you would make the whole of that country pay for the embankment?

I suppose so, as the bursting of an embankment may be assumed to imply local neglect; at present the mischief that is done is in some places recurrent; for instance, at Todmorden we had evidence that one of the tributaries from the mountains was embanked by local parties, but not properly maintained; and in the case of one millowner, whose mill I went into, the lower storey was flooded, his machinery was spoiled, and he told me that was the fourth or fifth time within 20 years that he had suffered from the broaching of those banks; he had no power to interfere, although he would gladly have contributed a considerable sum to have had a sound and safe bank; he had, however, only power to suffer.

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185. But these works are very expensive, and if nothing but the agricultural land on the immediate border of the river had to bear it, that might often be more than the value of the fee simple of the land?

Well, take again the Thames. I do not hold that the embankments necessary to prevent that flooding which takes place from above Oxford and down below Reading would be expensive; the works would be earth embankments for the most part, put parallel with the river, not necessarily close to it, but would be put at a certain distance inland, as some of the portions of the Thames have been embanked; and then whenever you embank you must provide main drainage, because you cannot permit the lands outside the embankment to be waterlogged by cutting off the communication with the river which they have during all ordinary periods.

186. You would require an arterial drain by the side of the river at the same time as your embankment?

On the land side of the embankment away from the river.

187. That would be an expensive affair?

It would be an open cut, and its cost would depend on its dimensions and length.

188. Take the case of Eton; there is very often a very large flood, which probably to the agricultural land of the neighbourhood is not injurious, frequently beneficial, but it is a very serious infliction upon the inhabitants, and very much injures the health of the district; it would not be fair to place the expense of embanking that upon the agricultural lands which do not want it, and to spare the houses which are really benefited?

No, I think if the river is embanked at Eton and Windsor to prevent the injurious flooding which takes place, you might fairly rate the whole of the property, land, and houses; and, as under the Public Health Act, land at one-fourth.

189. But the land is benefited by the floods?

If the land is benefited it is very easy to secure to the land the benefit of the water if the landowner will have a branch embankment from the main embankment running inland, so that he may take water upon his own special area, and not inconvenience his neighbours above or below him.

190. Would you leave the decision of all those points, which would be points of some intricacy, entirely to this drainage area authority which you contemplate?

I would not permit the river to be meddled with excepting the plans were submitted to, first, the local board that is to be established, and then, as I say, giving the riparian or the landowner power of appeal to the General Board, as we have now under the Public Health Act.

191. But we are not in a state of that absolute perfection that we can wish to stand still. One of the grievances is, not that too much is done, but that nothing is done; would you give to these parties the power of initiating schemes, and carrying them through?

I think, necessarily.

192. And of raising the money for the purpose?

I think, necessarily.

193. And of determining the area within which it was to be paid?

Yes.

194. And the amount of rate which that area is to bear?

Yes. And then, I assume, that they would have the power to mortgage the property of the district as under the Public Health Act, and borrow the money and repay it in a term of years.

195. Those are very large powers; would you give any appeal?

Yes, to a superior central board.

196. How would you constitute your central board?

Assume that a national conservancy was amalgamated with the Public Health Act; if you do not want to create a second board, add those powers to the president of the Local Government Board.

197. Then

197. Then you would propose that the President of the Local Government Board should determine in the last resort the question as to who is to be rated, and how much they are to be rated, and whether the schemes are to be carried out at all?

After local inquiry; after he had sent down a qualified inspector to hold a local inquiry as at present, and that inspector had taken evidence upon the site and reported to him, then those reports could be called for by Parliament at any time.

198. Duke of *Northumberland.*] I will ask you a question upon the subject of weirs and mills; it appears to me that by your evidence, you maintain that weirs and mills on a stream are, in point of fact, no evil, and do not contribute in any way to the damage caused by flood?

I am afraid that your Grace has misunderstood me. You must consider that I am speaking generally and broadly; they do not interfere materially with excessive floods, but that mills and weirs, in scores of instances, are permanently injurious, I am perfectly satisfied; they waterlog land on either side, and do mischief far beyond their worth at the present.

199. But in the case of excessive floods, you think they are not an appreciable evil?

As I have explained, I do not think they interfere very much one way or the other with excessive floods.

200. But in the case even of an excessive flood, the water that is penned up by one weir is transferred to the area below it, where another weir is situated, and there must be a backwater extending over the whole county, is there not?

It is so; but assuming that those weirs were not there, you would have the same volume of water in the river?

201. But not running over the banks?

Not just at that special place where the weir and lock is; there, I admit, you have the water raised exceptionally, for a few hundred yards above it and below it; but taking the great range of the river, the flood occurs, and damages the land on either side now, almost as much as it would if you were to remove those locks and weirs.

202. Then I am to conclude that, supposing you were to remove the whole of the mills between Oxford and Teddington, you would then have the land equally liable to flood on either side as it is now, a distance of some 60 miles?

You would have it flooded as it is now, perhaps not quite so severe, but you certainly would have it flooded, and you would have the enormous disadvantage of having no river in the dry season.

203. In the case of a tidal lock which has been spoken of, is that lock liable to the objection that in case of a flood in the upper country, that tidal lock restrains the waters, and heaps them back over the country above it?

There you come into another set of conditions; a tidal lock will only affect a river to the extent it dams the water, and this never can be very far; the upper floods do not raise the water running past London more than three or four feet; and when you have damage done in London, you must have three things concurring; you must have a great flood coming down the river, you must have an exceptionally high tide flowing into the river, and you must have a wind outside, heaping that tide higher than the tide-table gives you a record of.

204. What I wanted principally to elicit was, the effect of the penning back of the water upon the upper districts; do you conceive, therefore, that supposing you were to remove all the weirs on the Thames between Oxford and Teddington, the rise of the flood would be excessive here, and the upper country relieved?

No.

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205. Would the water rise here higher?
No, not in my opinion.

206. Then the velocity of the stream would be very much increased?
I think the water comes down now quite as quickly as is due to the depth, or to the head of water that is created by the flood, and whether you removed those weirs or left them, that velocity would be maintained in the lower reaches of the river.

207. Then I gather from your evidence, that the remedy you would afford in that case is simply embankment, and behind that embankment a system of arterial drainage more or less parallel with the bed of the river?
Yes, that I conceive to be the main remedy as regards economy and efficiency.

208. *Chairman.*] And also preventing the great solid pollution that goes on?
Yes, embanking and preventing the casting in of solids.

209. Duke of *Northumberland.*] Would, in your opinion, the dredging of these rivers be an object of necessity after a time?
You must consider what purpose you want to dredge for.

210. I mean with the view, of course, to carrying off the water more rapidly?
You may dredge an estuary, and in fact you may dredge any portion of a river, but you must always consider what you are doing. Supposing you dredge any of these ponds or pools up the Thames, if you did not want the depth of water for navigable purposes (and you do not in any parts that I know), you would dredge to no effect, because the river would very rapidly undo your dredging; you would always have nature working against you. Take the Clyde, which is the greatest example of the effect of dredging in the world, and which has been a sort of will-o'-the-wisp to many; it has been thought that what could be done in the Clyde could be done anywhere else. The truth is the Clyde has been deepened most extraordinarily, and is maintained at that depth by the population of Glasgow and Edinburgh, and that portion of Scotland, it is the trade requirements of the place that can afford to pay for the first dredging, and can afford to pay for the unceasing maintenance. Remove that trade from the Clyde, and let the river have its own way, and very quickly, in the course of half a century, you would have that river back in its original state.

211. Earl *Stanhope.*] As to these floods that took place in Lambeth, the water rose considerably over what you have stated, three or four feet?
Yes, but you had a concurrence of causes there; you had a very high spring tide; you had violent winds outside, driving the water into the river; and then you had the upland flood meeting it, and so the three causes produced that exceptionally high flood. I have known the tide in the River Mersey heaped up 11 feet above the tide-table by the gale of wind outside; that occurred upon a neap tide; it has occurred previously upon a spring tide, not within this half century; and some day it may occur again, when you will hear of the lower part of Liverpool being half drowned.

212. Your proposed remedy would not meet these cases of extraordinarily high floods?
There is nothing easier than to prevent all this portion of Lambeth and the margins on the side of the Thames being flooded.

213. How might it be easily prevented?
By embankments.

214. But it would need an embankment of 40 or 50 feet in height. There was a wave that passed almost over the railway station 40 or 50 feet higher than the high tide?
With regard to the London Gasworks at Nine Elms, there was no flooding there, not within the area of the gasworks. There is a private embankment there, and means of protection round the works; the water was six or seven feet above the protections around the London Gasworks, but the water was not within

within the area of the gasworks; if it had been it would have put all the fires out in the retorts.

215. May I ask what your remedy is?

If you had corresponding embankments parallel with the Thames, such as those that are round the London gasworks, you would have had no floods, and the streets would not have been inundated. Take West Ham, at the East End of London; a portion of the surface of West Ham built upon is 10 or 12 feet below high water; the Isle of Dogs, and a large area on the southern side of the river is also considerably below high water. Those places were not flooded.

216. Lord *Penrhyn.*] Do not you consider that the taking away of old London Bridge facilitated the tide coming up, so that it has raised the level here very materially; that old bridge had very large piers, and acted as a sort of flood-gate, making this comparatively a pool, and preventing the flood-tide from coming up?

The tides rise higher and recede lower now than they did before old London Bridge was removed. With regard to the bridge at Richmond, the spring tides recede from there some three feet more than they used to do, and there is a corresponding rise in the spring tide at the surface.

217. Earl *Stanhope.*] Do not you think that in some cases embankments, such as these in the Thames, may cause a flood by making a greater volume of water pass through a narrower channel?

But you see no portion of this new embankment has narrowed the river; the river is wider betwixt its banks than it was previously at a point below.

218. It is my recollection that it was something like 20 feet wider at Westminster Bridge?

You have taken in the mud flats on the two sides; but about London Bridge and that portion, the river has not been made narrower than it is at that point; that is to say, you have not encroached upon the river more than the narrowest point below in the aggregate; and the tendency of these embankments would be to quicken the velocity a little, and it would also so far reduce the head; the volume of water which you have shut out by enclosing those mud banks, is a very fractional portion of the volume of water rolling down the river.

219. Lord *Ker.*] You said that in your opinion the drainage made no difference whatever as to the rise or fall in the floods?

In the case of extreme floods, I do say so.

220. My experience totally differs from that; I happen to know a district where there was at one time very little drainage, and now the whole district is well drained. In those days when there was very little drainage, the flood used to take two or three days to rise, and a week to subside; now I have known an extreme flood to rise in the morning and go down again at night. And you said also that there was no less water given off in a sandy district than off a slated roof?

I have had gaugings of areas extending over several years, and I have found that after two or three months of excessive wet, seven-eighths of the whole of the rain-fall as measured in the gauge had come off the surface.

221. But I have known cases of very severe floods rising, not after a long season of wet, but when the downfall of rain had been so very heavy that the water had not had time to sink into the ground, and had run off at once?

That may be so on a small area. In this country rain may fall as heavily and as quickly as it ever falls in the tropics; for instance, upon the area of a portion of London, at the rate of four inches an hour has fallen; that is an exceedingly exceptional thunder-storm fall; and if that took place anywhere in the country over a comparatively small area, two or three score square miles, it would raise a flood rapidly, as you say, to be quickly up and quickly down.

222. These rapid floods bring down with them now, I think, in consequence

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of the drainage much more solid matter than they used to do, and that also affects the bottom of the stream to a very large extent?

I do not see that. When you drain land you put in tile drains from three to six feet in depth; the flood does not wash them out; if it did I could understand that it took the detritus down; but it rather prevents that, because for the time being that surface, or area, acts as a sponge would act; it takes up as much as fills the pores from the surface down to the drains; then if the rain is continuous, and the water falls upon the surface water, the whole of it comes off; but I cannot see how the draining of the land has had anything to do with causing that flood to carry away any more of the silt than it would formerly.

223. One effect of the embankment would be, I suppose, to make the stream greater between the two banks during the progress of the flood?

Very little.

224. To increase the rapidity of the stream, a greater weight of water?

No, you would raise the surface a very small portion indeed; you would simply confine it off the land on either side, and, as I say, that water that is upon the land that causes the flooding is a very fractional portion of the volume that is rolling down the river.

225. But would it not increase the scour at all?

It would not necessarily increase the scour, if it did not raise the head, and I cannot conceive that it would in any degree that you could measure.

226. So that it would not have any effect in bringing more silt down to the lower part of the stream?

No, it would not.

227. I think you said that you would put the embankment not close upon the river bank?

Not necessarily. It would all depend on circumstances, what you had to contend with. In some portions of the Thames already embanked, the banks are put 100 feet or 200 feet away; then there are reasons why they do not care about the intermediate portions being flooded.

228. That would not have any injurious effect, you think, upon the land between the embankment and the side of the river?

Any embanking that has been done on the Thames, has been done by private parties, or by private Acts of Parliament, and of course they have arranged the banks to suit their own convenience.

229. I suppose, not speaking of the Thames, but of other rivers, the embankments have been put up by proprietors of adjoining lands?

There are some cases where local Acts have been obtained, and the embankments have been put up, and the land been drained under the powers of local Acts. I know there are several cases.

230. Do you think that if embankments were largely increased on the side of rivers, there would not be a risk of making the land behind the embankment unhealthy by stopping back the drainage?

No, because I say, if you embank, you must also drain, and in each case you would have an intercepting drain parallel with the embankment, but coming down to a lower reach of the river, and therefore you would rather improve the land than injure it; you would give it an outlet that it had not probably before, and you would certainly prevent its being water-logged as it is now at times of flood.

231. Lord *Stewart of Garlies.*] In the case of the embankment, do you propose to compensate the landlord for taking his land in?

Instead of compensating him I should charge him.

232. You referred in the beginning of your evidence to some lakes. I think you instanced Windermere as rising from 12 to 14 feet. Do you think it would be possible to have a flood gate where the water runs out of the lake into the river, so as to allow the water to rise a considerable height, and only let it off into the river by degrees?

If

If you will only go the next time there is a very serious flood and look at it, you will see that it would be an undertaking a man had better leave alone.

233. I have seen it done in a small way in a lake two miles long?

Yes, you may on small lakes with small drainage areas, dealing with them may be easy; but when you are dealing with an area such as the Thames, a very large area, you have conditions that are not to be controlled in that way. The Thames is about 5,000 and the River Lee about 500 square miles, and both those rivers, the River Thames and the River Lee, are put under Conservancy Boards. The River Lee has its entire area (and I do not know there is another in England) put under one Conservancy Board. In the River Thames it is only the main channel of the river and three miles on each side. We have got the details of the tributaries to the Thames, but there was not time to make special inquiry, and consequently there was no legislation for the tributary streams of the Thames; they are beyond legislation at present; it is simply the main channel, and three miles on each side.

234. Earl *Cowper*.] When you say that drainage is not in any case a cause of the increase of floods, I suppose there is a great deal of doubt about that, and some people have a contrary opinion to yours?

Yes, I know that some very eminent men have a contrary opinion, and I have seen theories advanced, that planting forests, and cutting forests down materially affects meteorology and affects the flow of water. Now I do not believe that for one instant; you may cut all the forests in the world down, you will not affect meteorology, though you may modify the climate of the district.

235. Is there no difference in the South of France since the forests have been cleared away?

Yes, in ordinary seasons; but we want to come at what is meant by meteorology. The elements of meteorology are the heat from the sun, the area of ocean to be evaporated, and the atmosphere to carry the water away; man may do what he likes, he cannot affect any of those things. The excess arises from concentration of the vapour that has been raised from the ocean and its precipitation.

236. I will ask you one question about the embankments. You say that making an embankment raises the bed of a river invariably?

I do not quite say that; that would depend upon the slope of the river bed, and the character of the subsoil that the river was washing over; because some rivers deepen their beds, are constantly cutting their channel; you have evidence of that in hundreds of instances throughout different parts of the world.

237. And if the embanking should tend to narrow the river it would, of course, make it more rapid, and that would tend to deepen the bed?

Yes, but I can conceive that if we embanked the upper reaches of our rivers we should cause a scour which would tend to deepen that portion of the channel at the expense of the lower or flatter portion.

238. Lord *Ker*.] That is the question I asked you just now, and which you answered differently?

Then I misunderstood your Lordship's question if I gave a different answer.

239. Earl *Cowper*.] You say that embanking is the only means of preventing a flood?

I did not intend to say so; I say the prime means.

240. You do not mean that there would be no necessity for keeping the mouth of the river clear?

There might be a necessity.

241. And this would be a great part of the expense which would fall upon the ratepayers?

No, I cannot conceive that you will want to keep the mouth of a river clear for any purpose but navigation. I cannot conceive that you would do anything to an ordinary river mouth for the sake of discharging floods. All the rivers in England that are really capable of being navigated are, I think, navigable, and the other rivers which flow through steep banks out to the sea, as many of them do, the smaller rivers that are not navigable, you may leave to their own devices.

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242. But suppose the mouth of a tributary that runs into a larger river; even in that case if it got clogged up, would not that affect floods?
Tributaries falling into the navigable portion of a river, or into its estuary or flatter portion, may require dealing with.

243. The chief expense, in your opinion, would be the keeping up the embankments?
I think so.

244. Lord *Meldrum.*] I understood you to say that you did report upon the Nene Valley?
No, upon the Thames, the River Lee, and the Rivers Aire and Calder.

245. Lord *Winmarleigh.*] You stated that you knew of river beds which had been raised 14 feet by the habit of throwing solid matter into them?
The details are given in the reports. I think, for instance, a small river that comes down through Wrexham, through the town, was filled up until bridges that were originally made through which you could have driven a cart, you could scarcely drive a sheep through.

246. Is that owing to negligence on the part of people who have the natural control of the river, or is it from there being no law which could prevent that being done?
I presume it is because there was no law to compel any person to keep it clean, and from the abuse that takes place in all our rivers when they come into populous districts; there is no possible abuse that you can conceive of that a river is not subject to.

247. Do not you think it would be one of the first objects in keeping our rivers clear to make a general law which should forbid solid matter being thrown into the stream?
I do.

248. I believe that in recent Acts of Parliament relating to several rivers of England, such a law has been enacted?
The Public Health Act provides that now where sewerage is carried out, solids shall be intercepted, and as I have to examine the plans that are submitted, I am constantly minuting papers to that effect, and when the local authority has not provided for intercepting the solids the plans are transmitted back again to be revised and corrected.

249. There is then a general law now forbidding that?
Yes, the Public Health Act, and the Rivers Pollution Act of last year.

250. Does that law affect every stream whether it is in a populous district, or going through an agricultural district?
There is no place in England now which is not either urban or rural, and they are all under the same law.

251. Earl of *Sandwich.*] You were sent down to the Thames Valley to look over the Thames Valley, to report upon it?
I was chairman of the Rivers Pollution Commission, and made inquiry into the Thames Valley from its sources to its estuary, and did report.

252. Did you find many Private or Local Acts of Parliament relating to that river; had you many of those to wade through before you brought the Bill in?
Yes, and they are embraced in that report (*pointing to it*). The Thames Conservancy were constituted, and derive their powers under the following Acts of Parliament: the 24 Geo. 2, c. 8; the 11 Geo. 3, c. 45; the 15 Geo. 3, c. 11; the 28 Geo. 3, c. 51; the 35 Geo. 3, c. 106; the 52 Geo. 3, c. 47. The powers of the Conservators of the Thames are more extensive, and are derived from the 20 & 21 Vict. c. 147; the 27 & 28 Vict. c. 113.

253. An Act was passed for the improvement of the river?
Yes, it was based upon this report.

254. Then why do they want another Committee now to go into it; that Act which passed is now submitted to the House of Commons, and it is not before us?

There

There was an Act passed constituting one Conservancy for the River Thames, based upon the recommendations in this Report; and I think there has been one, if not two amended Acts since then. I am not quite sure that there have not been three Acts since this report was made.

255. What is the date of that Act?
1865 is the date of the Commission, and the date of the report is March 1866.

256. Did I understand you rightly that you think that the land drainage has no effect upon floods?
I say that land drainage and land cultivation does not seriously modify an excess of flood. It has an effect upon ordinary falls of rain, but in no way does it interfere with an excessive flood. That is the statement I made.

257. You have seen land undrained?
Yes.

258. You have seen it formerly when it was a swamp?
Yes.

259. You have seen the land drained and the outlet dry?
Yes.

260. And you have seen the one trickling and the other with a volume o water?
Yes.

261. Does it not follow that that volume of water getting into a confined space will raise it much more than with the land undrained?
No, the volume of water that you see flowing out in dry periods relieving the land in those periods is taking away the dry weather flow and is doing a vast amount of good in increasing the power of vegetation, and also in raising the temperature over that area. But I speak of an excessive flood, of a flood caused by rain upon rain during a series of weeks or months; and then I say whether that land has been drained and cultivated, or whether it has been left in a state of nature, the action of that flood upon the surface in the one case is just the same as in the other, and that you have not interfered with the action of the excessive flood by your draining; it comes off as rapidly and comes off in the way that it does over the undrained place simply because it is water falling upon water; it is water falling upon a subsoil logged to the uttermost, and whether it is drained or undrained makes no difference to the volume of water.

262. And the drained field and the undrained field afford about the same quantity of water, you say?
The undrained field retains its subsoil water in dry periods, and the drained field passes it away; but in the flood both of them are saturated to the surface, and then the excess goes off the surface of both equally.

263. Duke of *Northumberland.*] In your opinion is the present Conservancy Act for the River Thames open to improvement?
I have not studied the recent Act. I have had no occasion to do it, and I do not know what it is. There has been an Act passed for the government of the River Lee, and the clauses there with regard to river pollution and in the Thames, I believe, are similar.

264. *Chairman.*] Will you tell me to what you attribute the fact that after a Commission, a Committee, and three Acts of Parliament for the Conservancy of the Thames, the floods at various points of it are very much as bad as they used to be?
I do not think anything has been done in the upper reaches of the Thames.

265. Was the Conservancy authority, instituted by those Acts, responsible for the state of the river-bed and the embankments, and bound, as far as possible, to prevent these floods?
They were armed with powers to improve the navigation; the duty was put upon them to scavenge the Thames, to cleanse it, and keep it clean, and they were provided in the Act with power to levy a rate upon the water companies

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which was compromised to 1,000 *l.* a year. If my advice had been followed it would have been 20,000 *l.* a year; and then the Thames Conservators would really have had money to have done what is necessary for the improvement of the Thames, which they have not now.

266. Would you have proposed that Oxford and Eton should be embanked at the cost of the water consumers of the metropolis?

Yes, if necessary. And as to the cost of the water consumers of the metropolis, you have eight trading companies; six, I think, taking their water from the Thames. What right have they to take that water and sell it as you sell milk and butter, and pay nothing to the source from which it comes.

267. But that, as far as it goes, is a diminution of floods, at all events?

But it is not a diminution that lessens the Thames floods in any appreciable degree. They take now 60 or 70 million gallons per day; they have power to take upwards of 100 million gallons, and they take it, and they trade with it, and they sell it.

268. But because they sell the water, why should you charge them the cost of keeping the water within its banks?

In the first place it was not exactly to keep the water within its banks that I recommended the taxing of the companies, but it was this, that the Conservators should have means to prevent the pollution of the river, to keep the river in a much purer order. Previously it was encumbered by weeds, it was never cleansed, nor dredged, nor cared for in any way. You could have seen if you had gone up the river, scores of carcases floating upon it, and every sort of abomination going into it; and my wish and idea was, that you should tax the water companies to enable the Conservators to, as I say, scavenge the river and keep it clean.

269. But for the purposes upon which we are now engaged, such a provision, however salutary, would not have enabled the Conservators, or forced them to prevent floods?

I do not think the Act at all provides for enabling them to construct embankments upon private property. All that the Act provides, I believe, is that it enables them to deal with the navigable portion, to maintain the weirs, and to repair the locks, and to repair what, in fact, belonged to the former Conservators who became extinct, but not at all to interfere with private property.

270. Then, for the purposes which we are now contemplating, the Act was wholly useless?

Entirely useless; and also in the framing of the Act it so constitutes, that the weight of authority is in London, and therefore the representatives from the upper Thames are a minority, and they complain that it is no use their attending, for they are overruled by the City authority.

271. Earl *Stanhope.*] May I ask the extent of river area that the Corporation of London manage; from London Bridge to where?

I do not remember, but the information is in this report on the Thames. There is one fact I see before me here, that on the Thames and on its tributaries there are 360 mills.

272. *Chairman.*] With reference to your theory as to the non-effect of drainage upon extreme floods, you assume that the land is always saturated first; is that your experience in spring and summer floods; is not the very hardness of the land sometimes the cause why the water is all poured off, before it has sunk for more than a couple of feet?

My reply would extend to excessive floods at any period, either spring, summer, or autumn.

273. But you assume the saturation in all cases?

I assume the saturation up to the surface; I assume that the subsoil has been water-logged up to the surface, and that water has been falling on water.

274. But you can have severe floods after two or three days' thunderstorm?

Those

Those are exceptional; as I stated in answer to a noble Lord, you have in this climate rain-falls as excessive as any that take place in the tropics over limited areas; for instance, over the area of London there are recorded rain-falls at the rate of something like four inches within the hour. A similar fall of rain took place in Birmingham, and, in fact, every great thunderstorm brings down water in excess; I do not know any reason why the atmosphere in this part of the world should not be capable of containing just as much vapour as in the tropics.

275. Then it would not be to those exceptional phenomena that your description would apply?

No.

276. Lord *Penrhyn.*] I understood you not to deny that the rivers are now subject to greater fluctuations of rise of water, and more rapid fluctuations of rise of water, at the mouth, than they used to be before the drainage. You do not deny that?

I do.

277. Do you mean that when land is drained on each side of the river, and any quantity of rain then falls on the surface soil of that area, and it is brought down by pipes into that river, the water does not come quicker down into the river by pipes than it would do by soaking through the land?

The water comes quicker off during ordinary weather, but that is not the water that causes the flood.

278. Viscount *Eversley.*] But does not it prevent the land being so saturated with water; does it not delay the flood there?

Very probably, to a slight degree, as if the land is saturated up to the surface at the beginning of the fall of rain, the probability is that the flood at the beginning would come down quicker; but as the land drainage is only to the extent of from 3 feet to 6 feet in depth, which I think is the ordinary depth of land drainage, it would be a question of a very short period as to its being saturated, and that would absorb a very small proportion of the volume of water falling; then after that, whether the land is drained or undrained, the volume that is falling subsequent to the choking of the drains flows over just as rapidly as before.

279. Lord *Ker.*] You proposed, I think, that there should be district boards and a central board?

Yes.

280. Would you make your central board simply a court of appeal, or would you give it power of initiating, as well as controlling, the action of the district boards?

Perhaps the Committee would permit me to show them some maps that I have prepared, giving my idea of the local board and the river area board for a manufacturing district (*describing it to the Committee on the maps*). The central board should be simply, as the Local Board is now, a court of appeal, and upon appeal it should have power, through its inspectors, as we have now of making local enquiry, hearing evidence in the district, and reporting to the president, who would take action as he might think fit upon the report. At present most rivers and streams are considered boundaries of estates, and the central line of the river is assumed to be the boundary. Now, this circumstance has occurred: a millowner purchases a site of land on the margin of a river, and he finds upon his plan that the boundary of the estate is down the centre of the river, and he goes and builds his mill, and works upon that central line, regardless altogether of the riparian owner opposite to him, as to what becomes of the stream.

281. *Chairman.*] The riparian owner must be a very meek man?

But it may be done when there is no person to look after it; and very probably that land may have been owned by some minor or absentee, or some person of that kind, having no sort of immediate interest in it; at all events it is a fact that the thing has been done.

282. Lord *Winmarleigh.*] By the second Clause of the Rivers Pollution Act of last Session it is made an offence to throw over solid matter into a river; do

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you feel satisfied with that clause as being sufficient to prevent the pollution of rivers?

I do not know yet how the Act will work. I am the engineer appointed under that Act, but there has been no appeal as yet excepting from Canterbury, and that is not as to the casting in of solids, but as to pollution of the river by sewage. But the Act has not come into force; no action therefore has taken place on it yet.

283. Lord *Vernon.*] Do you think that the construction of any railway works, such as embankments, have had anything to do with altering the direction of flood water?

Not that I am aware of, because the railway for its own safety, or for its own sake, provides culvert room or bridge room sufficient to pass the water. During this excessive flood that I spoke of in the Aire and Calder Valley, the railway there, the Midland, or a branch of the Midland, had not taken sufficient precautions in building a large viaduct in a valley, I should think a quarter of a mile, wide and it was swept down into ruins by that flood, and the ordinary stream does not occupy a channel wider than this room.

284. *Chairman.*] The penalty upon them is sufficient, as a rule, to force them to make sufficient room for the passage of the water?

It ought to be, for they had to rebuild that viaduct at a cost of 30,000 *l.* or 40,000 *l.*

285. Lord *Vernon.*] And do you think that quite sufficient without Parliament taking any action through this Committee?

No, I would not permit anything connected with a river to be done by any one until the plans had been submitted, and had passed the authority which had control over that special portion of the river.

286. *Chairman.*] That would be yourself, I suppose?

No, it would be the local authority, and the engineer or surveyor of the local authority; and then if there were an appeal by any person it might come to me.

287. Lord *Vernon.*] In every case you would have somebody from the local authority examined before Parliament on every Railway Bill, would you, on this special subject of the effect of embankment on floods?

If you had a local conservancy board such as I imagine would exist, then necessarily if any river was going to be interfered with, to be crossed, or diverted, or embanked, the representative from that local authority might be summoned before any Parliamentary Committee, as the plans would have to be submitted to that local authority, and if they were not in accordance with what they required or desired they would appeal to the general board, and the general board would send down an inspector, and his report might be laid before the committee, as it occasionally is now. For instance, if anything is done with regard to sewerage and drainage or water supply, for any urban or rural district in England, if there is a committee sitting that at all touches that question, the report of the inspector may be sent to the chairman of that committee.

288. Earl *Cowper.*] Would you give the power to the Local Board to destroy any existing obstructions in the way of dams or weirs, subject, of course, to appeal?

Assuming that an Act is in force, as the Public Health Act is in force now, and assuming that a mill owner, or a riparian owner, executes works without complying with the law, without giving due notice, then, as in the case of buildings put up contrary to the requirements of the Act, they, the local authority, should have power to step in, and either stop the work or pull it down.

289. Not with regard to things that are existing at this moment?

No, I do not see how you can legislate for them.

290. Lord *Ker.*] I think you said that you would not allow anybody to interfere with a river without the authority of the Board?

If they were going to interfere with the river by altering it in any way, or executing works, I said that they should submit their plans, just as in a town

or

or local district, if you are going to erect any dwelling-house you must submit your plan to the Local Board.

291. Would not that be rather inquisitorial; it is impossible to define what a river is, and it might prevent a proprietor repairing the river bank almost, might it not?

I think it is quite necessary; there has been so much mischief done by undue interference.

292. If that were the law it would practically prevent the smallest alteration by the proprietor?

No doubt; and very properly.

293. *Chairman.*] Can you tell me, with reference to the Act of 1861, has any effect ever been given to the 58th clause of that Act, which runs as follows: "No person shall, without the consent of the Commissioners, cause any filthy or unwholesome water or washings of manufactories of mines or other foul or poisonous liquid to flow into any watercourse within the jurisdiction of the Commissioners of Sewers, and any person offending against this enactment shall incur a penalty not exceeding 5 *l.* and a further penalty of 40 *s.* for every day during which the offence is continued." Was any action ever taken upon that clause, that you are aware of?

Not that I am aware of.

294. Because it appears to cover all the ground; that covered by the late Rivers Pollution Act of last year?

I am not aware of any action having been taken on it.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Thursday next, at Twelve o'clock.

Die Jovis, 3° Maii, 1877.

PRESENT:

Lord President.	Lord Vernon.
Duke of Bedford.	Lord Stewart of Garlies.
Duke of Northumberland.	Lord Meldrum.
Marquess of Ripon.	Lord Ker.
Earl of Sandwich.	Lord Penrhyn.
Earl Cowper.	Lord Somerton.
Viscount Eversley.	Lord Winmarleigh.

The LORD PRESIDENT, in the Chair.

Mr. ARTHUR WELLESLEY PEEL, M.P., attending, is Examined, and withdraws.

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295. *Chairman.*] You are a Member of Parliament for Warwick?
Yes.

296. And where do you reside?
I reside in the neighbourhood of a tributary of the Ouse, called the Ivel. That river, I may say, has lately been subject to a series of recurrent floods, as well as the main river into which it flows, the Ouse.

297. Has your attention been much drawn to the subject of floods in that district?
It has been very much drawn to it, for this reason, that the River Ivel itself, in the course of about 15 months, was subject to about 15 or 16 distinct floods; an immense quantity of acres of land were under water, and remained under water for a period of time which was deleterious to the land. I may say in reference to the Ivel, that I wish for a moment to dwell upon that case, because it is rather a peculiar one, and illustrates a difficulty that, I think, will arise in the course of this inquiry. The River Ivel was subject since the 30th year of the reign of George the Second to a navigation trust, and within my short experience I can recollect vessels coming up from the sea, as far as the navigation trust extended. In course of time, owing to railway and other competition, and other causes, the navigation ceased; no barges came, and the Commissioners were absolutely destitute of funds. In consequence they, last year, applied for an Act to abolish themselves, and that Act was passed; and in the progress of that Bill I attempted, in concert with others, to get some sort of jurisdiction established in the place of that which would be abolished; that was not thought possible. The Act passed; the Navigation Commissioners have ceased to be, and that river is left now entirely without any jurisdiction whatever.

298. What steps did you and others take to remedy any damage that the floods did to your neighbourhood?
I was personally interested, only to a very small extent, and in concert with some of my neighbours, we put up an embankment, and that, so far as we are concerned, obviated the evil; but I am not sure that what we have done has not thrown more water upon our neighbours, in consequence of their not choosing to take concerted action with us.

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299. Then I understand that that particular river, the Ivel, is now without any jurisdiction at all?

There is no jurisdiction whatever over the Ivel, and in the course of 20 years, I can speak to that tributary of the Ouse having for a series of miles diminished in width one-half, and I think in depth one-half, it has silted up, been fouled with weeds, and is gradually being raised above the level of the surrounding country.

300. What is the condition of the Ouse?

So far as I know the Ouse, I believe the condition of the Ouse is very deplorable, from above Bedford to Bedford, along by the towns of Huntingdon, St. Ives, and down to Earith, which is as far as I have made any personal examination of it.

301. What supervision is there upon the Ouse?

So far as I know there is no supervision on the Ouse. There is a navigation trust, I believe, and nobody seems able to define what are the duties of the gentleman who is in possession of the navigation trust; he receives tolls, but I am not aware that he discharges any duties; I really do not know who the gentleman is at this moment. I can speak for the state of the country round Bedford as being simply deplorable in any times of more than the most ordinary rainfall.

302. Then so far as the Ouse and the Ivel are concerned, there is nobody now whose duty it is to look after the state of that river?

None whatever.

303. Earl of *Sandwich.*] The Corporation of Bedford has to do with some part of the river, has it not, and I believe the Lynn Commissioners have something to do with the outfall?

I should have said that I am speaking of the general control of the river.

304. Lord *Penrhyn.*] Will you state where the Ivel falls into the Ouse?

At a place called Tempsford.

305. *Chairman.*] You were stating that the condition of the country at Bedford and St. Ives was very unsatisfactory?

I consider it to be very unsatisfactory.

306. Are you aware of a report made by Mr. Abernethy upon this subject?

I have Mr. Abernethy's Report upon the River Ouse Improvement; it is a report dated November 1876. His attention was called to the floods which occur in the river Ouse, and he made a careful inspection of that river, I believe, at first, with an idea of merely a local remedy, but I believe, in the course of this inquiry, he found that the evil was too deep seated, and that he thought some very wide and general measures were necessary for the amelioration of the whole of the river basin.

307. Has your attention been called at all to the old Bedford River and the new Bedford River?

I went down to Earith, and I think the case of Earith very well illustrates another great difficulty attending upon this question, namely, as to the works to be constructed, and the apportionment of the expenses over a district. The state of Earith I believe to be this: from Earith to a place called Denver Sluice there run two great canals as straight as the crow flies, of 21 miles in length; the old Bedford River is the northernmost of them, and it was made in the year 1638, and that being found insufficient to carry off the waters of the Ouse, a second was made at a little distance south in the year 1652, both by the same eminent Dutch engineer, Sir Cornelius Vermuyden. The space between these two cuts is called the Washes, and comprises a space, I believe, of 5,000 acres. This space was gradually diverted from its original object of serving as an overflow for the water from the two cuts, and in the course of years the owners and occupiers of land in this intermediate space found it very inconvenient that their land should be made a receptacle for the surplus waters of the Ouse. They consequently obtained Acts of Parliament, one of which I have in my hand, an Act of the 52nd of George the Third (1812), by which they were empowered to bank out the water which it was the original intention of the engineer to throw upon them. The consequence was that these

two

two rivers became still more inadequate to perform their original functions; and that state of things has been going on till at last, at the present day, there is a great glut of water at Earith where the waters of the Ouse pass through a sluice, called the Seven Hole Sluice, from the number of sluice gates which are there fixed; and the question arises what works are necessary to carry off the water. Engineers have been called in, and engineers have submitted a scheme requiring very great expenditure; and I only mention this, not because I am competent to speak of the works myself, but because I think it illustrates the difficulty, how are you to apportion the expenditure necessary for those works. The people at Earith, I believe, are not able of themselves to bear the cost; and they argue that those who live up the main stream and up the tributaries of the Ouse are just as much entitled to contribute, or, at least, are entitled in their degree to contribute to these works as the innocent people who live at Earith. They say that the water is sent down from the uplands and from the tributaries in an increased volume, and that the outlet at Earith is not sufficient to carry off the flood of surplus water. I may add that the engineer who has been called in reports that the intermediate space is not now wanted for the purpose, as the fall is very slight, and owing to the width and the shallowness of the subsidiary channel which is afforded by these so-called washes, and therefore he proposes some other works that will entail a great deal of expenditure.

308. What is the space occupied between these two?
Five thousand acres.

309. I think you have paid considerable attention to the subject of floods in other parts besides the immediate neighbourhood in which you live?
I have no very great personal knowledge of it, but I moved in the House of Commons for a Committee on the subject, and my object was to establish a *primâ facie* case, and I did collect some evidence from different parts, but it is rather of a second-hand character, and I do not pretend to any originality in fact; but I have ascertained that in Somersetshire, for instance, in the month of January of this year, there were at one time no less than 100,000 acres under water; and that I believe to be not an exceptional state of things in Somersetshire, for I find in Mr. Grantham, the engineer's report in 1873, speaking of the floods of the preceding autumn and winter, he says, "The extent of the floods during the last autumn and winter in Somersetshire was exceptionally great, the rainfall having been excessive there as well as in other parts of the country. This applies to an area of 69,000 acres, and a population of 70,000. But in most years a considerable extent of flat lands of that county appears to be seriously injured in its productiveness, and the health of the people more or less injuriously affected by the want of adequate outfall for the flood waters." What was the case in 1873, I believe, applies *à fortiori* to 1877; and it may be in the knowledge of the Committee that the Somersetshire people have applied in Parliament this year for an Act, which I believe has either passed, or is passing through Parliament at the present moment, a special Act remedying the state of things on the Parrot, the Brue, the Yeo, and other Somersetshire rivers.

310. Do I rightly gather from that that the powers of the Land Drainage Act of 1861 were not adequate to deal with the case of Somersetshire?
That is the inference which I draw from their having applied for a special Act. If they could have worked under the Land Drainage Act of 1861, I should have thought they would have taken that course, because a special Act is always attended with great expenditure, and if the Land Drainage Act had been available, I think they would have had recourse to it.

311. Have you any other part of the country to give evidence upon?
The Trent. I had a communication from the mayor of Nottingham and the town clerk, in which they dwell very much upon the state of the Trent throughout, especially as it affects the town of Nottingham. They appointed a committee, and I hold in my hand a report from the Floods Committee of the Borough of Nottingham. They there dwell upon the fact of the Trent being a river of 147 miles long, with, I think, 18 tributaries, with a catchment basin of 4,052 square miles. They state the difficulties which arise in the course of that river from floods; they assert that the difficulties arise as high up as Burton-on-Trent; and they have come to the conclusion that some authority should be

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constituted having authority over the whole of the river, and the watershed through which it flows. They add that the evil is of such magnitude as to call for Imperial inquiry.

312. I think you have also gone into the Thames; but that being the subject of a Committee in the House of Commons, we do not propose to touch upon the Thames at present?

There are two Committees in the House of Commons now sitting, or about to sit, on the Thames Valley, which is a special case.

313. You have given us a sketch of these districts, the Ouse, the Trent, and the Somersetshire rivers; have you at all come to any conclusion as to what is the cause of these floods, speaking, not professionally, but merely from your own observation?

Speaking only from my own observation, I have attempted to get at the causes of the inundations, and to try and summarise them, which I do with very much diffidence. There may be many other causes, but I believe the cause of inundations throughout the country may be shortly stated as these. I should like, with the leave of the Committee, to state that many people are of opinion that the exceptional rainfall of the last few years has produced these floods, and I observe that at a meeting of the Hampton Wick Local Board (I only cite that as exemplifying the opinion that is held), one gentleman said that he "did not believe it was in the power of a Thames Flood Association to prevent nine inches of rainfall coming down in three months, and if it did, most assuredly there would be a flood of the Thames." I think, in reference to that remark, floods are certainly of more frequent recurrence of late years, and though the seasons have been very wet, perhaps I should more accurately say that a greater amount of rain has fallen in a given time, whatever may be the quantity that falls throughout the year; granting all that, and granting that in December 1876, in some parts of the country six inches of rain (which is an exceptional fall for one month) fell; granting all that, still, I believe, there are causes at work which induce these periodical inundations, and that when an exceptional rainfall takes place it only brings the evil out into more exceptional relief, so to speak. I do not state the causes in the order of the importance of their operation, but I believe one cause may be stated to be the vast increase of subsoil drainage throughout the country.

314. That is not an opinion which is universally held, you are aware, probably?

I am aware that some eminent engineers, or at least one eminent engineer, has stated a contrary opinion, and I do not for a moment wish to assert with any dogmatism an opinion against his, except what arises from my own information, and what I have collected from others, who I think are of authority on that subject; and perhaps it might not be irregular if I were to refer to a report which was sent me, the Report of the Transactions of the Institution of Surveyors for the Session of 1876-7, where it is stated (I do not know the authority of this particular gentleman whom I am going to refer to, but at all events he stated it publicly in the presence of very eminent individuals, who would have corrected him, I imagine, if he had been wrong) that about a fortnight ago he was asked to go down to Weedon in Northamptonshire, through which village there runs a small brook which lately had overflowed its banks. He owns that the site of the village was very badly selected, and that the damage was a standing warning to people if they put a village in such a locality as that. But the reason why I wish to cite his opinion is, that he illustrates how it is that these rivers cease to discharge their natural function, and how they become silted up by the quantity of water that is thrown into them from increased drainage. A survey was held of this particular stream in consequence of the inundations and of the consequent illness that was caused among the population, and damage to the surrounding lands; and in the course of that inquiry by a medical officer evidence was given that the bed of the stream had risen within a definite period of time, within an appreciably short time, something like 4 or 5 feet; and it strikes that gentleman that the rising of that bed was due to increased drainage having washed down a greater amount of silt; and it was not unreasonable, he thought, to suppose that the same thing had taken place in other parts of the country; for not only did the water (I am still quoting that gentleman), run down faster than it used to do, but in much greater quantities also, and it consequently carried down with it a proportionately greater quantity of solid matter which

which was deposited in the bed of the streams when they reach the lower and flatter part of their course. It appears to me that the opinion there given really states what does occur; that water comes down more rapidly; that it comes down in greater quantities, and that it is charged with an immense quantity of solid matter which forms banks in the bed of the river; the bed of the river not being now looked after, in many cases the deposit goes on until at last the evil manifests itself by the overflow of the river over its banks. If I may pursue that branch of the subject further, Mr. J. Clutton, who is a member of the Institution of Surveyors, and I believe very competent to give an opinion, also alluded, in this same debate to which I refer, to the thousands of acres over which he used, he says, to shoot snipe "for some days after rain had ceased to fall." He walked, he says, of late years over the same lands, even while the rain was actually falling, and he found there was no water that remained on it. The conclusion which he derives from that is that it is quite impossible to maintain that such a rapid and complete escape of the water could take place without a serious effect in more rapid increase of the floods, and he could not help thinking that year by year, with the increase of under draining, the floods would also tend to become greater and to rise more rapidly.

315. The Duke of *Northumberland.*] You are speaking of subsoil drainage only?

Yes; I believe there is also a great deal of surface drainage that goes on, and I believe, especially in Scotland, on sheep-farms; it has been found that the drains that carry off the water, instead of going laterally, as they used to do, are now made more vertical, and that the surface-water is at once thrown into the bed of the river, and causes sudden freshets, and sudden subsidence of the waters. There was a curious statement made by a gentleman in that report I have been speaking of, that it has been observed that streams rise suddenly to a high level and then fall, and then in a few hours time they rise again, and fall again, there being only one storm to account for the sudden rising, falling, and subsequent rising and falling. That has been accounted for by the immediate flow of water from one district, possibly from tributaries nearest the spot where the observation was made, allowing the water to run off before the water from another tributary gathered. That, I believe, has been found to be the case, especially in Scotland.

316. Lord *Penrhyn.*] You were speaking just now of the river Nene, above Weedon, and the silting up of the bed of that river below in the lower parts; is it not the case that the upper part of the valley through which that stream runs above Weedon, is steeper considerably than the part below Weedon, and that there it flows through flatter ground?

Yes.

317. Is it not the natural effect of the side drains that flow into the river, when they come down a steep bank, to create a sort of bank by the rapidity with which the water comes, to a greater degree than on flatter ground?

Yes.

318. At the outlet of any drain that runs into another river according to the rapidity of its flow, there is a greater tendency to form a bank of silt, as it were?

Yes; I believe there is no doubt of that, in the same way as it has occurred at Barking Creek.

319. *Chairman.*] Will you state any other cause of floods which operates, in your opinion?

Another cause, I believe, to be the neglect of the channels of the rivers owing to the absence of any supervision of the rivers, the absence of any dredging machine to take away the silt from the bed and to increase the height of the banks at the same time. Especially, I think, has this neglect happened where navigation trusts have ceased. I have cited one case to the Committee on the river Ivel, where the navigation has ceased, but I believe there are many others throughout the country where rivers which have been in charge of a navigation trust, having ceased to be under the supervision of a navigation trust, have gone into utter disrepair. I believe the River Lark, in the Eastern Counties, is an instance. That has become entirely silted up since the navigation of that river ceased. The navigation trust, to a certain extent, operated in favour of drainage.

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I do not say that the navigation was always compatible with the best interests of drainage, but in certain instances, by dredging the rivers and keeping the banks, they did promote the functions of the river as a natural outfall and sewer, in the old sense of that term, for the surrounding country; not a sewer in the technical sense of a polluting sewer, but as an outlet for the surplus water, or for the water of the district generally. Then, besides the neglect of the bed, there is the obvious cause of the neglect of the river banks; and it is believed by many people that an enormous deal of good would be done throughout the country if the river itself, in its bed and in its banks, was looked after, and that made the simple function of any board. Some people suggest that the local boards, for instance, should have the supervision of the actual bed of the river and banks of the river, in order to see that all the riparian owners do their duty, and that one man, by neglecting his duty, does not render useless all the efforts that have been made by his neighbours. A fourth cause may, I believe, be found, and, I believe, found very easily, in the obstructions caused by mills and dams and weirs; I am quite aware of the enormous difficulty of dealing with millers. I am also aware that no body of people are better able to maintain their own interest, or more resolutely to assert their own rights than millers; but I certainly, having seen what is the case on some rivers, must own that the obstructions caused by mills in flood times are a very serious item in the general inundations of the country. I hope I shall not be understood as wishing to deal lightly with the rights of millers, but at the same time some general supervision over millers in flood times such as this would be very useful; if they will not do it themselves (which they will not do in some parts), to cause them to open their sluice gates in time of floods by some simultaneous action. If there was some water bailiff who would have the authority to inform them of the coming of a flood (which can be done in these days; notice is given of floods in many parts), and if the miller were compelled to open his gates by some arrangement and by some method, I believe a great deal of pounding up of water which is not useful to millers (because they cannot use, flood-water), I believe a great deal of good would be done.

320. Earl *Cowper*.] Are dams and weirs on the increase; are there many more made every year?

I should imagine not.

321. Not more now than there were 20 or 30 years ago?

I should have thought not. It is a very interesting subject of inquiry, but I really do not know whether it is so or not.

322. Lord *Winmarleigh*.] Amongst the obstructions have you found that the old county bridges are not sufficiently wide for the increased drainage through them?

Yes, I think that is especially the case on the Ouse. I believe witnesses will come before this Committee who will state that the space for the passage of water through the bridge, which all the flood-water must pass, is utterly inadequate to carry off the increased volume of water which now comes down.

323. Who has the control of those bridges?

I suppose in the neighbourhood of a town, it would be under the town authority.

324. In counties generally, who would have the control?

I imagine the Highway Board would have control over them. The only other cause that I should wish to mention, is the inefficiency of the outlet.

325. Did your observation apply to county bridges as well as to bridges under the Highways Boards?

I was then especially speaking of bridges in towns or in boroughs where they would be, I suppose, under the authority of the town council, or the town authorities.

326. You cannot speak as to the county bridges?

No.

327. Lord *Vernon*.] Do you think that railway embankments have had anything to do with the floods?

Not as far as my knowledge goes.

328. Not in the Valley of the Ouse?

I would rather not speak to that of my own knowledge.

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329. The Midland Railway goes through the Valley of the Ouse?
Yes, and the Great Northern and the North Western.

330. *Chairman.*] You have told us of the damage that has been done by these floods, and you have also given us what you imagine to be some of the causes, the increased drainage and the neglect of the channels of the rivers, and the neglect of the river banks, and also the mills, and dams and weirs, and in some cases bridges; and you have also told us that in your part of the world, if there is anybody who have a jurisdiction, it is not very fully exercised, in your own immediate neighbourhood not exercised at all?
That is so.

331. Have you turned your attention to the question what would be a proper mode of dealing with the subject, both as to the area of the jurisdiction and the mode of taxation?
I think your Grace has mentioned the two great difficulties which arise in this question, namely, what is to be the area of jurisdiction in each particular case, and what is to be the method of taxation. I should wish to say, first, in reference to the remedy, that I believe that any general Act applicable to the whole of the country, and imposed compulsorily upon all the river basins of the country, would be utterly impracticable. I believe it would not be found to be necessary even, but I believe that if there were reasons why an Act of that kind should be passed, the difficulties would be found so enormous from the varying circumstances of the different river basins of England, that it would be impossible to have any general Act to apply to all the river basins, and to take under its general cognisance all the varying circumstances of the rivers of England. A general Act would have to do so many things, and would pre-suppose such a minute knowledge of varying circumstances, that I look upon a general Act which would govern these different circumstances as wholly impracticable. I will refer later on, if I am permitted, to what I think a general Act could do; but what I wish now to state is, that it is impossible to expect a general Act could be of any use if it was attempted to apply it to all the country universally. With reference to the area of jurisdiction, there are some gentlemen who advocate very strongly that wherever there is a river basin (and the areas of these river basins, I suppose, are well known by the reports which have been laid before Parliament), there you should impose compulsorily a Conservancy Board, co-extensive with the basin; I believe that it would be impossible, as I have just now said, to impose upon each basin a Conservancy Board, nor do I believe that that is wanted. I think it might be most useful in very many basins of England to have (by what means I propose shortly to explain) a superintending central body, with perhaps local subordinate bodies representing tributaries, or sections of the area; that these local bodies should be dependent upon the central body, and should refer to the central body for confirmation in special points; that where the interests of the whole of the area were affected, the central body should deal with it, where it was purely a local question; then the local body should, within certain limits to be defined, and under the control of the central body, have jurisdiction. Your Grace has mentioned, secondly, the mode of taxation. The mode of taxation, I think, is a still more difficult question, and I believe it is the way in which the existing Acts deal with the method of taxation that renders them comparatively inoperative. I may allude, in passing to the system adopted by the Thames Valley Act, which I believe establishes a certain level above high flood water-mark, five foot level, I think it is in the case of the Thames, and within which everybody shall be rated. Of course there is the very difficult question of the uplands and lands on remote tributaries, and there remains the question what method of taxation can be adopted which shall be fair, not only to those who are directly benefited by any steps which may be taken, but to those who live on remote tributaries, and are consequently remotely interested in any general system of drainage.

332. Have you considered how that could be done?
We had occasion, in the neighbourhood in which I reside, to look into the Acts which govern this question, and we found that there were a multiplicity of Acts indeed which governed this subject, but that there were so many that we were lost among them as to what remedy we should adopt.

333. Marquis of *Ripon.*] Do you include Private Local Acts?
I was not alluding to them; I believe they immensely complicate the difficulty.

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culty. I was referring to the Acts that have passed from the earliest times down to the Land Drainage Act of 1861. We looked into all the Acts, the Acts of Henry the Eighth, of Edward, of Elizabeth, of Anne, and of William the Fourth, down to Her Majesty's reign, and those Acts are still in force and unrepealed; and therefore one essential condition of improvement is that these Acts should be consolidated, because though these Acts are sometimes regarded as obsolete, yet they are put in force some of them at the present day; and I was told not long ago, in regard to this last winter's floods, that in the Tower Hamlets application was made to the authorities under that first Act which I have mentioned, the Act, namely, of Henry the Eighth, passed in the year 1531; and I am told that in another county, I think Lincoln, application was also made under that Act. What steps have been since taken in consequence of the application I do not know, but I should have thought any proceeding under that Act would be very cumbrous at the present time.

334. *Chairman.*] As to the Land Drainage Act of 1861, have you any knowledge of how that works?

I believe that that Act contains a great many valuable provisions; but the great difficulty that arises under that Act is the mode of rating. The rating clauses of that Act are so difficult to put in practice, the method suggested there admits of such an enormous quantity of controversy in the neighbourhood, that (I speak with great submission on the point) I do not believe that that Act could be found a workable Act with reference to any considerable extent of country or as a general rule.

335. You are aware that a great number of persons are required to consent before that Act can be put into operation?

I think that is one of the great difficulties of the Act of 1861, the great number of consents that are required at different stages. Though I am aware that the consent of the neighbourhood is a very important element in the success of any scheme, yet I think the evils are so great, that I would suggest some method by which a greater facility should be given for creating these Conservancy Boards, or whatever Boards it is thought proper to create. I should like to say that there always was a power at common law to issue Commissions of inquiry into these subjects; then that power was augmented by the first statute to which I have referred, that of Henry the Eighth, and Commissions, no doubt, were issued under that Act. That power practically failed from the interpretation of the courts of law confining the action of the Commissioners, under that Act, to navigable rivers and sewers communicating with the sea, above the point where the tide ebbs and flows. And, secondly, there was also this difficulty, that by the interpretation of the courts of law the Commissioners could make no new works to charge the people for, except what was specially mentioned. The Land Drainage Act to which reference has just been made, among other amending Acts, was passed for the purpose of remedying these limitations and defects, and ample powers were technically given for extending the Commissions of Sewers and Drainage Boards. The Act of 1861 did not supersede the great Act which was passed previously in 1833 as to Commissioners of Sewers; and Commissioners of Sewers are at work now, I believe, in different parts of the country; but the Act of 1861 made some changes in the constitution of the Commissioners, and put the creation of them under the veto of the Inclosure Commissioners, and made some other regulations for the future; so that these regulations will practically govern the creation of Drainage Boards for the future.

336. Would that be equally applicable to towns as to the agricultural districts?

The title of the Act of 1861 states that it is for the purpose of "amending the law relating to the Drainage of Land for Agricultural Purposes."

337. Earl of *Sandwich.*] It did not apply to navigable rivers?

The second part of it allowed the creation of drainage districts; therefore, to a certain extent, it would allow for the drainage of districts bordering on rivers. Before coming to the question of agricultural land as distinguished from urban districts, which is a very important point, I should like, to continue for a moment that head of the subject, to say that the powers which I have stated

stated were given under the Act of 1861, were greatly narrowed by the necessity of obtaining certain consents before the Act could be applied; and it is immensely difficult to get the consents required by that Act; and I believe it has been found in practice almost impracticable to get the consents required; and people rather resort to some other mode, either the obtaining of a special Act, as they have done in Somertsetshire, or going on in a kind of hand-to-mouth way, rather than undertake the great difficulty and trouble and expense of obtaining all the consents of these various owners throughout the district, a small body of owners being able at the last moment to defeat the whole scheme, and throw back all the work.

338. In fact, that Act of 1861 is unworkable?

I believe it to be unworkable, if we rely on it entirely to promote any drainage of any district. I do not say that it does not contain most valuable provisions which might be made the basis of a very good and simpler Act.

339. Lord *Penrhyn.*] By that Act the Inclosure Commissioners are bound to "dismiss the petition if the proprietors of one-third part of the land within the proposed boundaries express their dissent from the prayer thereof;" is not that the case?

That is so. If it would be agreeable to the Committee, I would give an abstract of that Act, just stating generally what the Land Drainage Act was. The consent of the Inclosure Commissioners is necessary as a condition precedent; the petition must be signed by proprietors of one-tenth of the land; the inspector is then to make the necessary inquiries, and if one-third of the proprietors dissent from the prayer of the petition, it must be dismissed. Then, assuming that a Commission is issued, their powers extend to maintaining and improving an existing water-course, outfalls, walls, or other defences against water. In the case of its being necessary for the Commission to remove obstructions, such as mills, dams, and weirs (and their right to remove such must be determined by arbitration), there are several sections for ascertaining and awarding the compensation to be given. All these provisions being complied with, the Commissioners are to present a petition to the Inclosure Commissioners signifying the land to be taken and the purposes for which it is designed, and thereupon the Inclosure Commissioners may again send an inspector into the district to inquire as to the propriety of assenting to the petition. The Inclosure Commissioners may then proceed by Provisional Order (to be afterwards confirmed by Act of Parliament) to put in force the powers of the Lands Clauses Consolidation Act in regard to the compulsory taking of land. There are some subsidiary provisions, that if more than 1,000 *l.* is involved as the cost of any work, the Commissioners must prepare plans and estimates, define the area to be taxed, draw up a list of the proprietors with the acreage of each ownership, and publish their notices in a prescribed manner; and then, if the proprietors of one-half of the area proposed to be rated, object to the execution of the work, there again the work ends, and nothing more is heard of it; otherwise the Commissioners proceed. Then on the question of rates, which the Act then goes on to deal with, if the expenditure exceeds 1,000 *l.* the rate is special on owners; otherwise the rate follows the usual course of law. The rates follow the assessment of the poor rate. If the rate is made without the presentment of a jury, then an appeal lies to quarter sessions, and that court may order arbitration. The powers given by this Act are cumulative, that is in addition to other powers already possessed by Commissioners of Sewers, and these Commissions of Sewers may still be issued as heretofore. That concludes the first part of the Act of 1861. The second portion deals exclusively with elective drainage districts, which may be formed by application by petition to the Inclosure Commissioners, who, upon a report by their inspector, and after ascertaining the assent of the proprietors of two-thirds of the area, may constitute a drainage district by a Provisional Order and subsequent Public General Act of Parliament. The Drainage Board so constituted would, under that Act, have the powers of Commissioners of Sewers, and absorb the existing powers of any Sewers Commissioners within the area of jurisdiction; and provisions are made for the first Drainage Board to be named in the Provisional Order, and afterwards for a yearly retirement; the electors to be those who are rated to the sewers, and have paid their rates up to the election, ten

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votes being the maximum, and the votes to be according to a scale of rateable value. I have thought it advisable to trouble the Committee with this abstract, which I believe summarises the Act of 1861, and I have been the more anxious to do that, because I believe that machinery to be very cumbrous and almost impracticable in working. The constant obtaining of consents, and the constant reference to a central body, and the repetition of inspections by inspectors, make the people weary of the thing, and they will not have it; and besides, the expense entailed is very great.

340. Lord *Winmarleigh*.] Can you speak of the number of cases in which it has been taken advantage of?

I was informed the other day that there are as many as 30 commissions, and I have not been able to find how those are working. I believe, under part 1 and part 2 of that Act, as many as 30 have been formed; but whether they have done any good is what I have not been able to ascertain; and if I might venture to suggest, I believe that the Inclosure Commissioners would be able to give the best information as to the working of those bodies so created under the Act. I do not like to state what the opinion of the Inclosure Commissioners is, but I understand that they think that there are difficulties in the working of that Act. I have not been able to ascertain how those bodies so constituted are working now; but I think I can state the practical two-fold difficulty which arises under that Act, which I think must be difficulties which are of very general application. The first is connected with the principle on which rates are levied. The principle stated in all the preceding Acts, and embodied in the Act of 1861, is that the rate should be levied according to the benefit received; and that, stated broadly, is a very sound principle. The Act of the Commissioners of Sewers, the 4th and 5th of Victoria, for instance, repeats that principle very broadly, that "such lands and hereditaments shall contribute to the rate in proportion to the benefit and advantage received, or capable to be received;" and that principle of imposing a rate according to benefit received, or danger averted, is the principle on which these Acts have proceeded in their rating clauses.

341. *Chairman*.] Does this Act to which you have alluded apply to towns?

The Act does not apply to towns, and there is another very great difficulty which I wish to allude to. When I state the two-fold difficulty, I believe the first difficulty to be that the sewers rate can only be levied after the rate of every person's tenure, and in proportion to the benefit that he receives, or to the danger averted from his particular holding; and, secondly, that a distinction is drawn between agricultural land and land occupied by towns. The Ouse, I think, illustrates the second difficulty, the exemption of towns from rating. There are many towns on the Ouse which suffer very much from these repeated floods. I have mentioned Bedford, St. Ives, and Huntingdon; and the villages on the banks of the tributaries, and the main stream suffer very much. There is no provision whatever for taxing the houses, and though it might be a very delicate thing to do, to impose a fresh tax, yet I believe many towns would be only too glad to contribute if there could be a fair apportionment of the rate. You may carry your works up to the borders of a town; you may prevent a hundred streets of a town, possibly, as in the case of one town in the west, from being flooded by water, and yet you are not able to ask that town for any contribution; and the consequence is that you lose a great source of revenue and a great means for carrying out a complete system.

342. That is to say, you might benefit the town very much by this system of drainage without any power of asking the town to contribute anything towards it?

That is so under the present system; and I believe, if the towns were asked to contribute, they would be glad to contribute something towards a general system. I do not advocate a compulsory system, but I believe it might be done by arrangement.

343. It would want some kind of machinery for carrying out that arrangement, would it not?

I think you want some kind of machinery by which the towns could be brought into the system; the consent of the towns, of course, must be asked to come into this new system. Whether the Committee might think that the towns

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in the neighbourhood, if they were benefited, ought to be compelled to contribute, is not for me to say. But with regard to the whole subject, I think that the time is come when, in certain cases, the application of this Drainage Act, the application, that is to say, not of the whole Drainage Act (for I have stated that the Drainage Act is impracticable as a working machinery), but of the principles of that Drainage Act, should be made compulsory, and compulsory in this way: I think that the compulsion might be enforced through the machinery of Provisional Orders, to be confirmed, of course, subsequently by Act of Parliament. It seems to me that if a certain number of the inhabitants in a flooded district should make an application to some Government department, which might have to deal with this subject, it then should be competent to the Government Department to send an inspector at the expense, I suppose, of the district, to enquire into the matter and to ascertain whether there was cause for the application which had been made, whether there was suffering in the district from floods, and what were the causes; and he should decide the area to be taxed, and though it sounds, perhaps, rather a heavy duty to impose upon an inspector, I believe, as a matter of practice, it might be done in concert with some of the delegates of the district, or by some arrangement of that sort, but without any formal machinery enacted for that purpose. I believe the inspector might, in that way, decide the area to be taxed. I believe he might also decide the contribution to be made by the towns, and the share they should have in the representation, on any board, conservancy board, or drainage board, which might subsequently be created. Thirdly, I believe that he might settle, according to a system of levels, following the principle in the Thames Valley Act, the proportion of taxation, namely, by means of the various levels to which the floods rose. Then, I think, power should be given (which is perhaps a large power to give, but I believe it to be necessary from the state of the case) to override Local Acts where these Local Acts were found to be detrimental to the general system of drainage proposed; I think that there should be general clauses on the principle of the Lands Clauses and Companies Clauses and other Acts, which might apply as a general Act, and should attach, as I believe the phrase is, to these Provisional Orders when they became Acts of Parliament; that these clauses should apply, as I say, as the Provisional Order became an Act. The effect of it would be this, that the Provisional Order would comprise these main heads: it would state first, what was the area to which the Act should be applied; it should state the constitution of the administrative body; and it should state, thirdly, the measure of taxation, according to some general rule, with an apportionment between the town and the country districts. When I say that that should be made a compulsory system, and that the machinery of Provisional Orders should be used as a compulsory system in certain cases, I do not wish to be understood as implying that the Land Drainage Act should be abolished. If there are districts which think that they can better proceed under the Land Drainage Acts, let them do so; but I think care should be taken that any district should not make use of the difficulties of the Land Drainage Acts for the purpose of evading the creation of a Conservancy Board. Therefore, if the central body became convinced that any district where these Acts were necessary, was simply using the difficulties, so to speak, of existing legislation as a mere excuse under which to shelter themselves from any action, then I think the inspector should be called in, and the machinery I have ventured to suggest of an inspector's report, and of a Provisional Order, should come into play, and so the creation of a Conservancy Board be facilitated.

344. *Chairman.*] Then, in point of fact, you would set out in the Provisional Order the area to which the Act should apply; you would also set out in the Provisional Order, as I understand you, the constitution of the administrative body, and you would set out in the Order the measure of taxation?

Yes.

345. Viscount *Eversley.*] Do you propose that this Provisional Order should emanate from the Inclosure Commission, or from any other body?

I hardly know what would be the proper body to whom to refer this question. I should think the Inclosure Commissioners would be a very proper body, they having dealt with cognate subjects so long.

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346. Lord *Penrhyn.*] With regard to the application for a district to be formed under the Drainage Act of 1861, there are certain rules laid down that a petition must be signed by so many people interested in the question to the central body; is there any distinction between the townspeople and the country people in forming the number; are the townspeople allowed to sign though they would not themselves be put under the taxation?

I believe the townspeople are excluded.

347. *Chairman.*] With regard to the third point which you raised, namely, the measure of taxation which is to be the subject of the Provisional Order, would you have it set out in that Provisional Order what the apportionment should be between the town and the country, so as to bring the town within the taxing power?

I think so. I think that the inspector, in company with some body created by the district in some way, not by any formal machinery, but some representative body, should confer with the towns as to what portion they should bear. It should always be remembered that this Provisional Order would be liable, of course, to the keenest criticism before a Committee of the House.

348. You mean the ordinary Provisional Order?

The ordinary Provisional Order system. But the point, I think, of my suggestion, if I may say so, is the facilitation of the machinery of Provisional Orders, without waiting for that cumbrous and repeated system of consents of the owners; let the owners certainly have their voice, but let them dispute the matter before the inspector, and afterwards, if they think proper, before the Committee to which the Provisional Order was referred. I see no other way of getting over the enormous complication of difficulties in the way of obtaining these repeated consents. There are of course those who think that a much less stringent power might be made use of, and that a body might be created as a sort of magnified local board which should look after the rivers and the banks of the rivers, and that they should confine themselves to that. There are those who think that no great engineering works of any considerable magnitude are required throughout the country, but that a great deal of good might be done by simply attending to the actual physical state, so to speak, of the main rivers.

349. Earl of *Sandwich.*] Did I rightly understand you to say that you thought that taxation should only exist where damage arises; because, in that case, those who caused the damage, if they are relieved themselves, would get off scot-free. I am talking of the upper part of the water-shed where a great body of water comes down from drainage; they suffer no damage, but they cause the damage below, and the question is, whether they ought not to bear a slight portion of taxation?

Yes. It seems to me that that is a very difficult question, whether they have not the right to send down water, and whether means ought not to be taken for its proper outfall below; but I think there is fairness in the principle that, as they contribute something to the river in the shape of water which has to be got rid of, they should contribute something to the expense under any general system. Of course that is an immense difficulty, as to whether the area of jurisdiction is to be equivalent to the area of taxation. I can imagine certain areas where the jurisdiction would extend without the necessity of having the area of taxation co-extensive; works might require to be done in a certain upland portion, entirely for the sake of the benefit of a lower portion, for which it would not be necessary to tax the upland country; but, as a rule, it is very difficult to separate the interests of the upland owners from those of the persons who reside below; and in any general system it appears to me that the taxation should be spread over all, recognising the fact that the tax ought to be as proportionate as the damage averted is proportionate, or as the benefit received is proportionate.

350. Lord *Ker.*] The upland proprietors might increase the extent of damage done by increasing their drainage?

That is the contention of the people of Earith. They say, We live on the neck of the soda-water bottle; the neck is too small to carry off the body of water which comes down to us; you people are contributing very much to the quantity of the water; we do not contribute any more now than we used to do, and

and therefore you ought to bear some portion of the expense of creating new works for the purpose of facilitating the outfall.

351. I think you propose to put each catchment, each area of the river, under a sort of self-government, that there should be a central body, and different boards for each considerable affluent?

I would not impose that compulsorily on all the rivers' basins, but that might be a useful mode in a general system, that there should be a central body and local subordinate boards.

352. And wherever such a constitution took place, would you give them the power of abolishing all Local Acts?

All Local Acts so far as they interfered with the general system proposed.

353. With reference to the Ivel, with which, I think, you are well acquainted, you said that the navigation of the lower part of it is now stopped?

The navigation throughout the whole extent of the Ivel is stopped.

354. Was the navigation kept up by locks previously?

It was kept up by locks; and a regular system, in short, was established for the purposes of the navigation. It may show what difficulties arise in this river where the navigation has fallen into neglect through the deterioration of the works of the Navigation Commissioners, if I mention that a miller in that neighbourhood (I would rather not mention the name), finding that the head of water to which he was entitled, or rather to which he thought himself entitled, was interfered with by the passage of the water through these dilapidated works, erected across a navigable stream, a solid buttress for the purpose of diverting the water through the cut which lead to his mill. With others, I remonstrated against this; but he said that the Commissioners had allowed their works to get out of repair; that they no longer served incidentally to the maintenance of his head of water to which he was entitled; and that he must take the law into his own hands; and he accordingly built this solid wall, which is there to this day. I appeared before Lord Redesdale in the House of Lords, and I said I thought a condition ought to be made, that before Parliament would allow the Act to be passed, that miller ought to remove the obstruction; and a compromise was effected by which he has lowered this solid wall a certain height, so as to allow the water to flow over it, but there it remains to this day; so little is the river looked after, that a single individual has been able to erect a solid wall, of a considerable width, right across a stream, up which once, in my knowledge, vessels passed.

355. Are the locks done away with entirely?

The locks are now being removed under the conditions of that Act which passed last year; they have removed one on property belonging to myself.

356. What locks remain are always open?

What locks remain will be open.

357. Will that make any difference to the floods?

I think it facilitates the passage of the water, decidedly. The works were in entire disrepair, lying in useless masses of timber across the stream, and so damming it up; those they have removed.

358. Have you any cases of proprietors getting rid of their mills in order to increase the value of their land above?

I have not heard of that.

359. I suppose, as a matter of fact, the value of land would, in many cases, be increased by the removal of the mills below?

Certainly.

360. Marquis of *Ripon.*] I did not quite understand the extent to which you would propose that the amended Act should be applied compulsorily; I think early in your evidence, you said that you did not intend to apply it compulsorily, but then, subsequently, you seemed to contemplate that an inspector should go from the Inclosure Commissioners upon the application of a small body of persons, and that in his discretion a Provisional Order should be issued

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which, if it became law, would establish the system you propose in that district?

I would apply it compulsorily, but the distinction I meant to have drawn was, that instead of having a general compulsory Act, applicable throughout the country, here and there, where some steps were proved to be necessary, a compulsory system through the machinery of a Provisional Order should be established.

361. What amount of local application would you require to set the Commissioners in motion?

That is a question upon which I should not like to give a definite answer; I think it might be a very small number, simply to start the question, as it were; there would be so many opportunities for expressing any difference of opinion, either before the inspector or the Committee, that I think in the first instance a very limited number of owners might give the momentum, so to speak.

362. Take a district where there exists a Drainage Commission under a Local Act in full operation at this time. Supposing that there were a small number of persons dissatisfied with the management of that Commission, would you give them the power of appealing to the Inclosure Commissioners, and should an inspector then be sent down, and would the Inclosure Commissioners' inspector have power to override the Local Act of Parliament, and abolish the existing Commission?

I think so; it is a strong remedy, but I think that it is the only means of getting out of a great difficulty; there are so many existing bodies, and you will have so many instances of *imperium in imperio*, that I do not see how, unless you abolish them, you could have any general system. There would be not only Commissioners of Sewers, but Improvement Commissioners in many instances, and Drainage Commissioners, and Navigation Commissioners, and different powers of rating possessed by these bodies under Private Acts.

363. Would you give a power by a Provisional Order to put an end to a navigation?

I speak at this moment without accurate knowledge, but I think power is given to the Board of Trade now to abolish navigation trusts, if I am not mistaken.

364. Are you sure that there is such a general power. There was evidence given here the other day that there is a power under certain Railway Acts, but not a general power?

I think, subject to correction, that there is a power under the Board of Trade of abolishing Navigation Trusts.

365. If they think that they are useless?

Yes; that may seem inconsistent with what I stated as to the difficulty we had in abolishing our Navigation Commission on the Ivel, which was really a considerable difficulty, and lasted some months; but I could obtain after to-day further information on that particular point.

366. Would you give the inspector, sent down by the Inclosure Commissioners, any power to recommend a system of drainage, to give any opinion upon engineering questions; or would you simply give him power to recommend the establishment of a local authority which would subsequently deal with all those matters?

If he was an engineer he might of course give very valuable evidence on engineering questions, and as to the different systems of levels. If he were simply a practical inspector, he might call in a qualified professional person to give advice on professional questions like that as to the levels, and as to the damage averted, or the benefit received by large districts, without going into particular cases.

367. Still you would not contemplate preventing local authorities from calling in independent engineering advice if they thought fit?

Certainly not.

368. There is one further point I should like to trouble you upon; would you be

be kind enough to explain the precise distinction, under the Act of 1861, between Commissioners of Sewers and Drainage Boards?

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The Act of 1861 refers constantly to the Commissioners of Sewers Act of 1833, which is the great Act governing the creation of Commissions of Sewers, and it leaves that Act in operation, so far as commissions created under it are concerned; but it adopts another machinery for the creation of drainage boards; and it also constitutes central bodies, to whom reference can be made, for the creation of these bodies. The Inclosure Commissioners, for instance, are there substituted. I believe Commissions of Sewers could be issued up to that time by the Lord Chancellor. There is a little conflict of jurisdiction between the Commission of Sewers, created under previous Acts, and by the Act of 1833, and the drainage districts created under the Act of 1841.

369. Under this Act there is a power, as I understand it, to create either Commissioners of Sewers under the first part of the Act, or elective drainage districts under the second part?

That is so.

370. When they are created, either of them, is there any difference in their powers?

There is, I think, in the elective drainage districts, because the mode of election is different.

371. But I mean, when they are once set up have they the same powers?

I believe they have the same powers, and certainly Commissions of Sewers which may be elected under that Act of 1841 are, I think, avowedly invested with the same powers as Commissions of Sewers previously issued.

372. Then the substantial distinction between them is in the mode of their appointment?

In the mode of their appointment.

373. You said that in some cases you would recommend the establishment of a general body for the whole river, with subordinate local jurisdictions under it. I suppose you would give a complete power of general control to your superior body, would you not?

Certainly.

374. Because, in case of floods, it is very important that each river should be under the control of one body which should be responsible for taking the necessary measures?

Yes. I rather meant that these subordinate local bodies which I have hinted at should be a sort of sub-committees of the central body, rather than that they should be invested with any considerable powers of their own (I do not think I made it sufficiently clear), else there would be a clashing sometimes between the local interest and the general interest.

375. They should not have power to become obstructive?

Certainly not; and I think the central body should have a veto on all proceedings. I think there should be delegations, as it were, from the central body, in order to give the central body the advantage of their local knowledge.

376. Earl of *Sandwich.*] You talked of a destruction of locks upon the Ivel?

They were falling into disrepair in consequence of nobody exercising any supervision.

377. Though we now are suffering from floods, we may at some future time suffer from drought; and for agricultural purposes if the means of damming up the water is entirely taken away, the agricultural population may suffer very much from want of water?

No doubt that is so. I did not go into that question of storeage; I thought exclusively of remedying floods. I confess I was not prepared to consider the question (which I venture to think is an entirely distinct one, and not applicable to the same districts) of the storing of water in case of droughts.

378. Duke of *Northumberland.*] Such necessities as those would, of course, be dealt with under the local committees?

Yes.

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379. Lord *Somerton.*] In cases where there are people resident upon a tributary stream of a river in a high and dry land which did not require drainage, and which had not been drained, would you go the length of subjecting them to any rate, because they would be perfectly innocent of doing any harm to the people below; their only crime would be living on the stream?

Their crime, if I may repeat your Lordship's term, would be in sending down more water than the river could carry off.

380. But by no action of their own?

Except by increasing the drainage, and sending down a larger supply of water to be carried off.

381. I suggested a case in which there was no drainage required, and none had been carried out; would you still suggest the rating of those people?

Then, I think, if the inspector that I have drawn a picture of would do his duty properly, he would say that the benefit derived by these gentlemen living on the uplands of the tributary stream would be no appreciable benefit, and that they could hardly be brought within the area of taxation.

382. *Chairman.*] I gathered from your evidence that this gentleman, the inspector, and the others locally connected, were to describe the area that was to be brought within the area of taxation?

Yes.

383. That from their local knowledge they would be able to understand and set out what part of the country would contribute towards the flood?

That is exactly my meaning. I have been referred (though I have not had time to look into them) to the Irish Acts on the subject, which I believe are very complete, so I have been told; but I only speak second hand on that subject. I believe there an estimate is made of the value of the lands before any works are carried out, and an estimate is made after the works have been carried out, and the rate is apportioned according to the benefit received after the works have been carried out as compared with the state of things before the works were commenced.

384. Earl of *Ripon.*] This is what Mr. Ridley said last time on that question of which we were speaking just now, of the power of the Board of Trade to shut up navigation, "I had been under the impression that there was a general power of that kind under some of the Canal and Navigation General Acts; but I am informed at the Board of Trade that I am wrong there, but that they think I should find such a power under some of the Private Acts." Will you let us have some evidence on that, so as to make it quite clear what are the present powers?

I will, if the Committee wish it, ascertain from the Board of Trade.

385. Duke of *Bedford.*] Was a Bill drafted by Sir George Lewis for the purpose of the formation of Conservancy Boards?

I believe that is so. In the year 1861, when the Land Drainage Act came into operation, I believe a very useful measure of a very stringent kind was drawn up and submitted to Sir Cornwall Lewis. I have asked to see that, but I have not been able to get it, and therefore I only speak of it from hearsay; but I am told that the exigencies of the times were such that it was thought not advisable to go on with it, and the Land Drainage Act was adopted as the second best measure that could be adopted at the time.

386. Lord *Stewart of Garlies.*] About the embankment on the Ivel, to what sort of an extent is that embanked?

Just along a few meadows that happen to lie on the bank of the stream.

387. On one side?

On one side only.

388. And it is the other side that suffered in consequence?

Yes, I think it very probable. The people on the opposite bank are complaining of our action; we asked them to combine, but they thought the remedy we adopted would not be sufficient; it has been quite sufficient, and during some recent floods that have occurred, not a drop of water has come on our side, and I think it has been thrown on their land opposite.

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389. Is that embankment immediately on the present bank?
A few inches receding from the bank; a very trifling height.

390. What sort of width?
Not about two feet wide. I mention that as showing that steps might be taken by riparian proprietors, but unless there is concerted action, the evil might be thrown on to others.

391. Lord *Somerton.*] Is it an earthen bank?
Yes, taken out from the bed of the stream.

392. Do you find that an expensive operation?
Not at all expensive; it was a trifling work, but it extended over three quarters of a mile.

MR. JAMES ABERNETHY, is called in; and Examined, as follows:

Mr. *J. Abernethy.*

393. *Chairman.*] I BELIEVE you are a Civil Engineer, and reside in London?
I do.

394. And you have had considerable experience in engineering works abroad?
I have.

395. Will you state what the works are that you have been engaged in abroad?
I was one of the Commissioners selected by the Austrian Government for the regulation of the Danube at Vienna; and I was also engineer-in-chief of the Grand Cavour, the Great Irrigation Canal, in Italy, which involved the regulation of various rivers in connection with that canal; and in Hungary I was employed by the Hungarian Government to report on the regulation of the river Theiss, an important river running through Hungary, and discharging into the Danube.

396. Then coming to this country, I believe you have inspected the Ouse, and the Nene, and other rivers?
I have.

397. Have you especially inspected the Ouse with reference to the floods that take place there?
I have.

398. And have you formed any opinion as to what was the cause of the floods that have taken place?
The cause of the recent floods in the Ouse, in the first place, is the defective state of the outlets, that is the Hundred Foot River, and the Old Bedford River, and what is termed the Wash-lands lying between those two rivers, originally designed as a spillwater or flood-channel; the general deterioration of the river-bed above Earith which has been obstructed by numerous shoals, and an enormous growth of weeds which impede the current, and the utter want of proper subsidiary channels for carrying off the flood-waters.

399. First of all, what do you consider has caused the increase in the silt or solid mass in the body of the river, and the increase of weeds?
The general neglect of the channels throughout. The river above Earith is a canalized river; there are various weirs and locks constructed in the bed of the river for navigation purposes, and there is a tendency under these circumstances for weeds to accumulate rapidly; and in former years the weeds used to be removed from time to time; but for a long period of time that has been entirely neglected.

400. Under whose authority were the rivers kept clean in former years?
Under a body of commissioners, who appear at that time to have had powers, and did exercise them to a certain extent. I should explain to your Lordships, that the original outlets of the Bedford River and the New Bedford or Hundred Foot River, as designed by the Dutch engineer, Sir Cornelius Ver-

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muyden, proved themselves effective as outlets for the drainage for a long period of time. The first work constructed was the old Bedford River; but, inasmuch as no provision had been made for catch-water drains, for the purpose of intercepting the flood-waters from the uplands, that river was found inefficient for the purpose, and subsequently the New Bedford or Hundred Foot River was executed, also under the direction of Sir Cornelius Vermuyden, and under the patronage and control of the then Earl of Bedford. A bank was raised on the northern side of the Old Bedford River, and on the southern side of the New Bedford River, and the intermediate space between these two rivers, the Wash-lands, was set aside as a channel in times of flood. Subsequently, the Washlands were obstructed at Earith by a bank thrown across nearly their whole extent, and by the construction of what in the Old Bedford River is termed the Seven Hole Sluice, and further, at the seaward end of the Wash-lands, by additional embankments; so that the original outlets provided by Vermuyden, namely, the Old Bedford River, the Hundred Foot, or New Bedford River, and the intervening Wash-lands, which were available in times of floods, are no longer so.

401. Is it your opinion, that the improvement of the drainage of the uplands has been the cause of an additional volume of water being discharged into the Ouse, by the opening up of the navigation by the Ivel?

That is one cause, undoubtedly. The removal of the navigation works of the Ivel has contributed, to a certain extent, to cause the discharge of a greater volume of water into the Ouse, and also I attribute the suddenness and extent of the floods to the improvement in the land drainage.

402. With regard to these commissioners, who appear to have kept the rivers clean during a considerable period of time, are you able to state when, and for what cause, their labours ceased?

The Vermuyden drainage works were completed, I think, about the year 1658, and in 1777 the drainage had become defective; at that time the Wash-lands or flood-channel had been obstructed, and since that period detioration seems to have gone on gradually up to the present time.

403. Were those commissioners appointed under any Act of Parliament?

I think they were under an early Act of George the Second.

404. I want to know whether they exist now?

I believe not; or if they do exist they certainly exercise no power whatever in drainage works.

405. But you are not able to say whether they do exist or not; all you do know is, that if they do exist they do nothing?

They do nothing.

406. Then that is the state in which you find the Ouse?

It is.

407. What remedy would you propose?

I may mention that I was first employed by what is termed the Ouse Committee, to take into consideration the improvement of the river for drainage purposes between Huntingdon and Earith; but on an examination of the outlets and the river generally, it was quite obvious that the improvement of that section of the river would simply injure the section above, and probably the section of the river below; and I therefore considered it an imperial question, requiring to be dealt with as a whole from the outlets to the upper portions of the river.

408. What committee is that to which you allude?

A committee termed the Ouse Flood Committee, of which Mr. Coote was the Chairman; a committee of landowners whose lands have been subject to heavy floods, who formed themselves into a committee for the purpose of taking advice as to the best means of remedying the floods in the special district in which their lands are situated.

409. Then it was a committee of volunteers?

It was.

410. Who associated themselves together for the purpose of dealing with their own property?
It was.

411. And therefore, of course, having no power over anybody else's property?
Quite so.

412. Your idea was that it should be dealt it, if dealt with at all, as a whole, not as a part?
My opinion was that these various rivers discharging into the Norfolk Estuary, namely, the Ouse, and the Nene, and the Witham, must be dealt with as a whole.

413. Duke of *Northumberland.*] With all the minor affluents?
With all the minor affluents.

414. *Chairman.*] You have told us of these floods; do you think that they have increased of late years?
That is my impression.

415. Partly in consequence, you say, of the improved drainage of the country?
The improved drainage of the country, no doubt, has contributed largely to increase the floods, and to the suddenness of their discharge.

416. I daresay you are very conversant with the Act of 1861?
I had occasion to read through that Act in connection with the inquiry on the River Ouse, to see whether the provisions of that Act would enable the matter to be dealt with more especially as an imperial or general measure?

417. And what was the conclusions that you arrived at?
The conclusion which I arrived at was that it was utterly impossible to carry out a general measure under the provisions of that Act.

418. In what way would it be impossible?
Inasmuch as you required the consent of a large number of the proprietors of lands affected before you could apply the provisions of the Act, and it has been found in the case of these various rivers that a certain section of the landed proprietors may be exceedingly willing to contribute towards the improvement of the drainage, while other sections, whose land is not so much affected, oppose any measure of increased taxation, and consequently that renders futile any measure of general improvement.

419. Then there is the necessity for getting the consent of so many?
Yes.

420. But all these persons being interested whose consent is required?
Interested, of course, more or less.

421. Finding the state of things as you describe it in the case, and looking into the Act of 1861, and finding that you cannot provide a remedy under that Act, has your attention at all been turned to what would be a good way of dealing with the matter?
It has.

422. Will you state to the Committee what your opinion is?
I am of opinion that the whole drainage area of the various rivers should be placed under one representative jurisdiction, a body of Commissioners representing the whole area affected by drainage.

423. How would you have that area defined?
The lands immediately subjected to floods I should propose to tax to a certain extent, and all the uplands where improved drainage has been carried out, and in consequence an additional body of water thrown upon the low lands, should also be taxed to a more limited extent. It appeared to me impossible to raise the necessary funds to carry out works for the general improvement of these rivers in any other way. I should suggest therefore that representative bodies having the conservation or control of the whole of the water-shed or basin of each river should be constituted, that in addition a central body, or Govern-

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ment board of appeal should be constituted, to whom, in case of difference arising, or any questions requiring further consideration or engineering knowledge to determine, the matter should be referred.

424. A Government Board?
A Government Board.

425. That is as to the area of taxation?
The area of taxation.

426. How do you propose to levy that rate over the whole of this area; would you have one uniform rate over the whole district, whether it is upon the uplands or upon the lower portions?
I should propose a varying rate; and that has been carried out to a certain extent in the case of the River Nene, under an Act of 1852. Under that Act it was proposed to deepen and improve the River Nene from Peterborough to the sea for navigable purposes, and in connection with that, also to improve the drainage of the district; and certain lands at present are subjected to taxation.

427. A varying taxation?
A varying taxation; and as an instance of the futility of endeavouring to carry out any general measure under the direction of various bodies having separate interests, I would point out the present condition of matters in the River Nene.

428. Earl of *Sandwich.*] But the improvement of the Nene is at a dead-lock now, is it not?
It is at a dead-lock for the present.

429. There are no Commissioners for the River Nene, are there?
There are various bodies of Commissioners. To give your Lordship some information as regards the various bodies having charge of the River Nene, I would read here a list of the duties which are at present assigned to them.

430. *Chairman.*] Before you do that, would you tell us by what authority these various bodies which you allude to are constituted?
I believe in many cases they are self-elected; that is to say, the proprietors of a certain amount of land are Commissioners, can constitute themselves Commissioners.

431. Under an Act?
I believe under various Acts. Now, commencing at Peterborough, for a length of 16¼ miles the river is under the Nene Navigation Commissioners, so far as the channel of the river is concerned, from Peterborough to Beavis Hall, above Wisbeach. Then from Beavis Hall to the county boundary immediately below Wisbeach, a distance of four miles, the Wisbeach Corporation have charge of the channel of the river. From the county boundary to Crab Hole, 10½ miles, that is the embouchure of the river, the Commissioners of the Nene Outfall have the charge of the river. Then, again, from Peterborough to the junction of Marrow Bank with River Bank at Guyhirne, 13¼ miles, the North Level Commissioners have the protection of the banks on the north side of the river; and from Guyhirne to Wisbeach Bridge (North Brink Bank), 5¼ miles, the Wisbeach Court of Sewers have the protection of the banks on the north side of the river. Through Wisbeach town and the frontage of the river throughout the town, making one mile, private owners have the protection of the banks on the north side of the river. From Wisbeach town to the county boundary at what is termed the Horse Shoe Bank, half a mile, the Wisbeach Court of Sewers have the protection of the banks on the north side of the river; and from the county boundary to Crab Hole, 10½ miles, the Commissioners of the Nene Outfall have the protection of the banks. So that there are numerous bodies, some having charge of the channel, others of the banks of the river, and there is no general conservative body for the efficient carrying out of any works required for the general improvement of the drainage.

432. Duke of *Bedford.*] What are you quoting from?
From a report made to his Grace the Duke of Bedford by Sir John Coode.

433. *Chairman.*]

433. *Chairman.*] Your proposal would be to put an end to all those various bodies, and put the rivers under one Commission?
It would.

434. You stated that a Government Board was to decide the area?
That, I think, would be desirable; it would require a careful consideration as to the area which should be taxed; there might be exceptions in the high lands where, if taxation was at all levied, it should be of an exceptionally light character.

435. Do you mean that the Government Board should decide that without any appeal; or would you put it in the form of a Provisional Order, such as was suggested by Mr Peel?
I think the form of a Provisional Order would be the best form.

436. That would give an appeal?
That would give an appeal.

437. Did you hear Mr. Peel's evidence on that point?
I did.

438. Did you generally concur with him in the views he entertained as to the mode of working of this subject by way of Provisional Order?
To a certain extent I do; but I should recommend a more imperial or general measure than Mr. Peel recommended.

439. Would you explain your meaning?
I should give the Commissioners appointed for a particular basin or water-shed of a river the entire control in the first place of the regulation of the river throughout. Various interests might require to be represented of navigation and drainage; and I would suggest that any measure propounded by them, if of a very important character, should, before its final approval, be subjected to a Central Government Board; but that all the preparatory steps for this general measure should be taken by the Board having charge of that particular district in the first place.

440. Then, as to the mode of taxation, would you give that to this Board, this Commission?
In the first place, they might differ as to the amounts of taxation over the various districts affected, and if questions arose as regards the question of taxation, then the final appeal would be to the Central Board in London for final adjustment.

441. What means would the Central Board in London have of deciding this question that was brought to them on appeal?
I apprehend that the Commissioners or Board having charge of the particular water-shed or basin of the river, would act under professional advice, and after careful investigation as to the position of the various lands affected, would then apportion the taxation; but that even after that it should be still subject to the final approval of a Central Board professionally advised in London.

442. I think you said that you would propose a smaller taxation for the uplands and a larger taxation for the lower country?
That is so.

443. Duke of *Northumberland.*] Would you leave to the Board so constituted the whole arrangement of the taxation, subject always to an appeal to the Commissioners in London, or whoever the central authority might be?
I would.

444. Without any arrangement with Local Boards as to the minor affluents?
I think they should supersede the Local Boards. Local Authorities might, of course, afford information, or give evidence as to their particular claims to the General Board having charge of the whole district; but I think that there should be a Board having the entire control, irrespective of Local Boards.

445. *Chairman.*] Practically, I understand your scheme would be to put the

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whole river under one large Board, and to supersede altogether any Local Boards that may now exist?
That is so.

446. Duke of *Northumberland.*] And leave it to the Board so constituted to make such arrangements in regard to sub-committees for the upland districts as they might choose to create?
Yes. I believe that in no other way could you arrive at a just and equitable system of taxation, unless the matter is dealt with as a general measure. I might show your Lordships the effect of dealing with it as a partial matter (*producing a Map*).

447. *Chairman.*] What do you mean by dealing with it as an "imperial measure?"
As a measure from the sea outlet to the upper parts of the river, subject to the final control of a Central Government Board.

448. You do not mean that the Government of the country should take all the rivers under its protection?
No; simply that a Central Board should be appointed by the Government as a Board of final appeal. My impression is that these rivers will require very extensive works to be carried out before they can be improved effectually as regards drainage, and, in my opinion, a very large outlay will have to be encountered, therefore I think it very desirable that there should be a central authority, or Government Board, to deal with the measure finally.

449. Earl of *Sandwich.*] Did you examine the outfall at Lynn?
Yes.

450. Did you find it in a bad state?
It is in a bad state as regards the navigation, but with regard to the outfall works which were completed in 1839 under Sir John Rennie and Mr. Telford, the effect of those works has been very beneficial. The whole of the bed of the river, without the aid of dredging, except to a very slight extent, was deepened from Wisbeach to the sea.

451. I am speaking of the outfall at Lynn?
That has been very much improved by the Eau Brink Commissioners.

452. That is under the Lower Outfall Commissioners?
Yes.

453. And they have great powers of taxation?
They have.

454. Lord *Somerton.*] Did you find the outfall at Nene in a good state?
Not in a good state; it requires improvement.

455. Who has the charge of the banks at Sutton Bridge?
I should presume the Nene Outfall Commissioners.

456. You do not know for certain?
I am not quite certain.

457. Or from Sutton Bridge down to the lighthouse?
The Nene Outfall Commissioners, I believe.

458. *Chairman.*] You were going to explain by means of the map in your hand the effect of dealing with the matter only partially?
Under the Act of 1852 it was proposed to deepen the whole of the river from its outlet at the Wash to Peterborough for navigable purposes, combined with the improvement of the drainage of the county, and power was taken to tax various lands affected by that proposed improvement. The proposed works were not carried out except to a very small extent, but the lands above what is termed the Dog-in-a-Doublet Sluice, or the intake of the Thorney River up to Peterborough, and above Peterborough, are taxed.

459. Lord *Penrhyn.*] How far above Peterborough?
I am not sure of the distance, but a considerable distance above Peterborough. The lands which belong to the Marquis of Huntly are taxed to the extent of

11 *s.* an acre; the lands above, at various rates of taxation, amounting to, I believe, as low as 1 *s.* 6 *d.* an acre.

460. Lord *Ker.*] Are those the lands immediately adjoining the river?
Yes, affected by the river drainage.

461. No others?
No others. In consequence of the non-completion of the works, the lands which are taxed to the greatest rate, namely, at 11 *s.* an acre, are the lands most subject to floods, inasmuch as the outlet has not been improved below those lands.

462. Lord *Somerton.*] Are you aware that owners of land some considerable distance from the river (*pointing to the Map*), 20 miles off, were also taxed?
According as their level is affected by the drainage, they are, and any improvement of the drainage above Peterborough only tends to throw more water on the lands below, which are most heavily taxed.

463. *Chairman.*] This state of things leads you to think that the whole of that river ought to have been under one commission?
That is so.

464. Duke of *Northumberland.*] Are the persons rated at this moment actually paying a tax of 11 *s.* an acre?
I believe so.

465. Earl of *Sandwich.*] Does Lord Huntly pay that now?
I believe so, now.

466. Do you know at all how the money is appropriated?
I do not.

467. *Chairman.*] You say that the lands there pay a rate of 11 *s.* an acre for purposes of improvement of the river?
It was supposed originally that if the whole scheme had been carried out, these lands would have received the greatest amount of benefit; but as the works have not been carried out it is quite the reverse.

468. Then this payment of 11 *s.* an acre, as I understand you, is paid upon the supposition that some benefit might have been received, which benefit never has accrued at all?
Just so.

469. Lord *Stewart of Garlies.*] What was the benefit expected?
An improved outlet for the passage of flood-waters.

470. *Chairman.*] But what power was there of causing this payment to be made, and what power is there of enforcing it now for benefits which do not exist?
Under the Act of 1852, I believe the power is still exercised.

471. It is under an Act of Parliament that it is done?
Yes.

472. Duke of *Bedford.*] You are speaking of the whole drainage rate under the Act of 1852?
Consequent upon that Act of 1852.

473. Do you mean an additional 11 *s.*?
No; before that, I believe, the lands were not rated.

474. Lord *Penrhyn.*] You said that these lands which pay a rate of 11 *s.* an acre down below Peterborough are in a great measure rendered more liable to flood by the improvement of the river above Peterborough?
There are so; and by the want of an outlet below.

475. Then you do not, I presume, agree with the evidence which this Committee have had, that if you were to take away the mill-dam on a river, and throw all them open, that would make no difference in bringing the water down in the lower portions of the river?
I might explain at this point my views on that question. An opinion has been strongly expressed, that in order to improve the drainage, for instance, of the River Thames, it is only necessary to remove Teddington Lock, and all the various weirs in the river up to Oxford, and to deepen and enlarge the channel

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of the river. Now, inasmuch as it is necessary during the summer months to preserve the surface level for irrigation purposes, I do not agree with the sweeping measure of removing all these various dams and weirs which at present keep up the surface level; and as to the enlargement of the channel of the river, if it was carried out, then the river would run in a depressed bed considerably below the level of the adjoining lands, and during the summer months would act as a great drain to the subsoil. For the purpose of providing for floods, I am of opinion that it is necessary to have a distinct and separate channel precisely of the same character as the channel which has been carried out in the case of the Danube at Vienna, which I have referred to before. There there is an ordinary channel for the normal condition of the river, and a subsidiary or extraordinary channel as a provision for flood-waters. And similar measure, in my opinion, will have to be adopted in the case of the various rivers in this country and by proper works for regulating the passage of flood-water at the various weirs or dams, in addition to the flood-channel I have spoken of. The normal condition of the river, as regards level, can then be preserved during the summer months, and a sufficient outlet provided for the passage of floods.

476. Lord *Ker.*] Would not that necessitate an enormous expenditure?
It is a question of appropriating a certain portion of the river bank for the passage of the flood-waters of a similar character to what is termed the Wash-lands referred to in the case of the River Ouse. The only sacrifice in that case would be that that land would become permanent grass land, subject to the passage of floods occasionally. It would not be a very expensive work, because it is a mere question of forming embankments, which could be done to a great extent by removing obstructions in the river, such as existing shoals. With regard to the plan adopted at Vienna, I might, perhaps, show your Lordships a map in order to explain my views more distinctly. (*The Witness produces a Map showing the works on the Danube, and explains the Map to the Committee.*)

477. *Chairman.*] Your proposal would extend the embankment?
It would be an additional embankment formed for the purpose of the passage of floods.

478. In ordinary cases what would be the amount of land that would be required for that purpose?
It would vary as regards the particular volume of water to be dealt with.

479. Take the Ouse?
In that case there is one part of the Ouse where the river is confined between definite banks at a place called Overcoat Ferry, a short distance above Earith, and during the very heavy floods the river was confined within the banks at that point. The arrangement there is precisely similar to the arrangement which I have been explaining to your Lordships on the Danube.

480. I conclude that the land which is so embanked would be useless for agricultural purposes?
It would serve for grass land. If proper provision is made, the floods would be of much shorter duration than at present, and if the land is flooded for a short period of time as grass land, it is afterwards available as pasturage.

481. What would be the width of it?
That would depend upon the volume of water to be dealt with.

482. But you gave us an instance where it had been done above Earith; can you tell what sort of a figure it is there?
At Overcoat Ferry, to the best of my recollection, it is about 450 feet.

483. Lord *Ker.*] Is the value of the grass land not liable to be much deteriorated by the silt and things brought down by the flood?
It is found in some cases to have improved the value of the land.

484. It depends upon the character of the soil, I suppose?
Yes; at present the land submerged is destroyed to a great extent by the duration of the floods; but if provision is made for passing the floods off rapidly, then

then the amount of the deterioration may be very small, and in some cases it might improve it.

485. Earl of *Sandwich.*] Have you at all ascertained where the main stoppage of the water is in the Ouse; where the first great stoppage occurs; is it at Earith?

The first great stoppage is at Earith; I found, in my visit last January, during a heavy flood there, that there was a fall between the upper side of the Seven Hole Sluice and the lower side, of nearly two feet, and the same fall took place also at the bank of the New Bedford River.

486. The two cuts are not on a level?

They are nearly on a level.

487. How do you account for a great rush of water going down to the upper cut and there being a dead stop below the bridge on the other side?

To the obstruction offered by the Seven Hole Sluice, and an embankment immediately adjoining it. An extraordinary thing connected with that sluice is this, that they do not lift the shuttles to allow the flood-waters to pass until they have risen to a level of four feet six inches above the level of the Wash-lands, or until a large portion of the country above is flooded.

488. Then you think that if the bank was taken away from the Wash now there would be great relief?

Undoubtedly.

489. Duke of *Northumberland.*] What is the object of keeping the sluices closed so long?

Originally, I suppose, it was the wish to preserve the Wash-lands below to the very last period of time.

490. Lord *Ker.*] What is the extent of the Wash-lands?

Five thousand acres.

491. And that is liable to be covered with flood water?

It was on that occasion covered with flood water.

492. You said that the Ouse was subject to deterioration; what do you call deterioration?

I mean the formation of banks or shoals within the channel of the river, and a great growth of weeds and other plants.

493. Then the remedy you propose would not only be embankment in that case but deepening the channel of the river?

Clearing the river of those obstructions.

494. Would not the effect of confining the river in floods be to cause an increased scour?

For the conservation of the surface-level of the river during the summer months it is necessary in the case of the Ouse, as in the case of the Thames, to a certain extent, to canalise the river, and the short period during which the floods would have an effect on the bed of the river would not tend to clear the various shoals formed in it.

495. In the upper reaches of the river do not you think the mills, by keeping their dams closed, cause additional floods to the land above them?

Yes.

496. You would give compulsory powers to your proposed local boards, you said?

Yes.

497. Would you give them compulsory powers to remove the mills?

Where they are an absolute obstruction I would.

498. And you would give power to give compensation to the millowners by a tax on the adjoining lands?

Yes, it would be necessary to compensate the millowners.

499. Would you think it necessary to have a board for every catchment area in

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Great Britain, or should there be power for the smaller districts to amalgamate?

I think the body I propose would represent the whole water-shed of the rivers and their various affluents also.

500. In the case of smaller rivers flowing directly into the sea, would you give two or three neighbouring rivers of that description powers to form one board to control the whole?

Yes.

501. And with regard to private Acts, would you give powers to supersede the private Acts in all cases where new boards were formed?

I would.

502. Lord *Somerton.*] What sort of weeds do you say that the Ouse is choked with; is it what is called the American weed?

No, I did not observe the American weed there to any great extent.

503. Do you know of any cases where the American weed has made any appreciable difference in the bed of a river?

In canals I have, but not in rivers.

504. Marquess of *Ripon.*] I think you said that you proposed that all important schemes involving considerable outlay for engineering purposes, should be submitted for the approval of the Government Board, which you propose to establish?

Finally.

505. I suppose that the Government Board would employ a Government engineer to consider those schemes?

Undoubtedly.

506. Do not you think that the effect of such an arrangement would be, practically, to put into the hands of that particular professional gentleman the whole control of that particular branch of the profession?

He would be a professional adviser of what I call the central board or the Government Board; but further than that, of course, he would have no power; it would be for him to give his professional advice, and it would be for the board to adopt it or not.

507. But the natural result would be, that the board would adopt the advice of their professional adviser; is not that so?

As a general rule.

508. And would not the effect of that be to throw the whole control of these important engineering questions into the hands of one individual?

I think not.

509. Do you think that the local board would go to the expense of employing other professional advice, if they knew that it was likely to be controlled and overruled by the advice of a gentleman who would, no doubt, have well-known theories and opinions of his own on the subject?

When I spoke of the Central Government Board having professional advice, I did not mean the advice of one individual, but that they should take professional advice, and after careful consideration, adopt what they considered the best plan; I should not give authority to one single engineer to deal with these matters.

510. But you would give the authority to the board, who would consult, probably, the same individual, if they follow the usual practice in such matters?

That is so; but I think that that difficulty might be avoided.

511. Do not you think that it would be an objection if the practical control of all these large engineering questions were to fall into the hands of one man, however able?

A decided objection.

512. I should like to ask you whether you think that there is necessary incompatibility between navigation and drainage; that if the same river is used for

for the two purposes there is any necessary incompatibility between the two different objects?

I think not.

513. You think that they can both be conducted together?

Yes; by the improvement of the navigation, as a general rule, you will improve the outlet, and by doing so, to a certain extent, improve the drainage generally.

514. You have given a very decided opinion that the improvement in surface drainage is one of the causes of the greater floods that have taken place of later years?

I have.

515. You are aware that some persons take a different view of the thing?

I am.

516. The objection to your opinion, as I understood it, which was stated before this Committee, was this, that the improved agricultural drainage might make the water run off more quickly in the first instance, but that in the case of a heavy rain, as soon as the land became thoroughly saturated, it did not in the least matter whether it was drained or undrained; the water ran off from the surface at precisely the same rate in the one case as in the other; what is your opinion upon that?

I do not agree with it. If you could suppose the whole land saturated with water to such an extent that not a single drop more water could pass into it, that might be true, but the heavy rainfall falling on the land is caught by the drains, and is not allowed to percolate through the strata beneath; so you have the addition of the water passed off by those drains, and also the surface-water during heavy rains when the ground is saturated to such an extent as your Lordship mentions; you have the two together.

517. Going on simultaneously?

Simultaneously.

518. Whereas, in the undrained land, you can have only one of those causes in operation?

Yes.

519. Earl *Cowper*.] I wish to ask you one or two questions on the subject of taxation. I think you said that you would leave it entirely to the local board to adjust it?

In the first place.

520. Subject to appeal?

Subject to appeal.

521. But would it not cause endless squabbles and difficulties?

I think, if the board had the absolute power of defining the amount of taxation, it would not.

522. Would it not be necessary to lay down the general principle?

It would; and that would vary according to the conditions of the various rivers.

523. I suppose the liability of the owners on the upper part of a river entirely depends upon the truth of the theory that improved drainage has a tendency to increase floods?

That is so; I would go a little further; you must regard the rivers as main drains or main arteries for carrying off the water of the rainfall; and, regarding the matter in that light, I think that the exceptional cases where no taxation at all should be levied would be very few.

524. But if the advising engineer of the board was one of those men, of whom there are a great many, who hold that drainage has nothing to do with increasing the tendency to flood, in those cases the upper proprietors would not be taxed; if, on the other hand, the advising engineer held a contrary opinion, they would be taxed?

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I am decidedly of opinion that the improved drainage is one cause of floods.

525. And you would tax the upper proprietors?
To a certain extent, I would.

526. But a man who had different opinions would not?
Undoubtedly not; but I cannot conceive how any professional man could arrive at that conclusion, because it is perfectly obvious that lands which were formerly saturated with water for a long period of time, and were, in fact, marsh lands, are now entirely drained, and the water which was formerly retained in the soil of those lands is now passed off directly into the river.

527. Lord *Somerton.*] With far greater rapidity; in less time?
Yes.

528. *Chairman.*] Lands which, under the former system without drainage were not cultivated, under an improved system of drainage, are cultivated and produce a very good crop?
That is so, and numerous small streams which used to discharge water throughout the summer months are now dry throughout the summer months.

529. Lord *Penrhyn.*] I understood you to say that you would form your area of management and taxation corresponding with the water-shed of each river?
Yes.

530. And you would include in one area the whole of the water-shed of one particular river. Take the Nene, for instance; from the Wash up to the highest affluent of the Nene, you would include all in one area of taxation?
Yes.

531. And you would give them power, under the Central Local Government Board, of overriding all existing boards?
I would.

532. And even all such as sanitary boards; you would take away the power of directing or diverting the water from those boards, and put it into the hands of this board?
All the boards of town authorities upon these various rivers and rural sanitary boards, would have the power of appealing to the general board, and bringing the subject they had to deal with before that board.

533. But you would give them, in the first instance, the power of overriding all those boards, subject to an appeal against their decision?
I would.

534. I suppose you would give them the power of compensation as well as the power of taxation, for the purpose of carrying out the works; you would give them the power of compensation for any works or navigation which might be interfered with?
Yes, that would be necessary and just.

535. How would you fix the compensation; to what court would you submit the amount of compensation to be given for great works that might be carried out?
That might be effected, as in the case of present Acts of Parliament, by a jury.

536. Composed of what?
An independent jury altogether.

537. And you would give them the power of giving compensation for large works of irrigation, or various other works, which may have been obstructed?
Yes.

538. Overriding them all?
Yes.

539. And give them the power of pulling down mills?
Where necessary.

540. And compensation, of course, for that?
Yes.

541. And you are not of the opinion that was expressed the other day that the water mills make no difference in the flow of water down below in the lower parts of the stream; that doing away with them would not let down the water more suddenly?
Doing away with them would have this effect, that the flood-water would pass off much more rapidly, but it would lower the surface of the river during the summer months.

542. And if the locks and weirs were done away with, do you think it would not allow the water to come down more rapidly into the lower parts of the stream?
It would allow the water to come down more rapidly from that part; but that would not be a sufficient provision for flood-water, and it would have this effect, that it would lower the surface-water during the summer months, and deprive all the adjoining lands of the benefits of irrigation.

543. But at the same time it would not increase the risk of floods in the lower part of the river?
It would not.

544. Lord *Meldrum.*] I understand that when I was unfortunately out of the room, you alluded to that part of the Nene where my property is. You are aware that the Nene has many Acts of Parliament bearing upon it; the Act of 1852 was simply a Consolidation Act?
Yes.

545. What was done by the Act of 1852 simply, is not the sole cause of the heavy taxation of the lands adjoining the Nene?
I believe not.

546. It goes back to as far as George the First, the first Act?
Yes, I think so.

547. And some of the lands adjoining it are more heavily taxed than others?
Yes.

548. I believe you stated that my land paid 11 *s.* an acre; are you aware that I have some which pays 15 *s.* an acre?
I believe there are exceptions beyond 11 *s.*

549. You know the Nene well, do you not?
Yes, I have been professionally engaged there.

550. You are aware that the navigation on the Nene is almost *nil*; at the present moment the only value of keeping up the navigation, and of the heavy taxation which pays the interest on the debt, and just keeps up the locks, is really to keep up the locks and things for the millowners, not at all for the navigation?
I am not aware that that was the object of the Act of 1852.

551. I did not say the object, but the present use of the thing?
I believe that is so, as to the present use.

552. There is no navigation, but the millowners claim that the thing should be kept up for them?
There is no navigation beyond Wisbeach.

553. I will take another point; perhaps you have not considered that if you remove the mills, and improve the run of the water thereby, the supply of water in the summer months to the fen lands would be almost stopped?
That is what I have said. I said it has been argued that, if you remove the locks and weirs from the river, you will make a provision for floods, and that the floods will pass out more rapidly; but I say it is necessary to preserve the surface-level of these rivers during the summer months for irrigation purposes, and that, therefore, I should not recommend the abolition of weirs and locks in that wholesale way; but to provide an additional flood channel for the flood-waters.

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554. That would be a very difficult thing upon the Nene, as you are aware?
I think, from what I have seen of the Nene, it would be a simple matter.

555. My impression of the Nene was this, that the great thing wanted there is the improvement of the outfall; to begin at the sea and work upwards?
There is no doubt that improvement is wanted at the outfall; a great obstruction exists at the town of Wisbeach.

556. If you are to deal with the drainage of any district, is it not the common-sense way to begin at the outfall and to work upwards?
The proper plan is to commence at the outfall and work upwards; and a great deal of the drainage is inefficient, more particularly in the River Witham, adjoining, from the fact that the river-bed is actually above the level of the sills of the drainage sluices, and therefore the drainage is not available.

557. Take the Nene; you are aware that there are five or six bodies working almost in opposition; there are the Outfall Commissioners, the North Level Commissioners, the Mid-Level Commissioners, the South Level Commissioners, the Nene Valley Commissioners, and the Navigation Commissioners?
Yes.

558. Surely the persons who have improved the drainage most would be the Outfall Commissioners, would they not?
The Outfall Commissioners are more interested in navigation. As regards the Nene and other rivers, I have recommended a general body to have charge of the whole.

559. Lord *Stewart of Garlies.*] Was it for the improvement of the outfall that the lower landed proprietor should be taxed; what benefit was it to him?
Now it is none at all.

560. What benefit was it supposed to be to him?
That the bed of the river was to have been lowered from Peterborough to the sea.

561. That would have helped their drainage?
Yes, and the navigation also?

562. Lord *Vernon.*] The remedy you propose for floods is a separate channel?
Yes.

563. It amounts, as far as I understand your evidence, to the embankments being thrown much further back on each side of the river?
An embankment independent of the existing river embankment.

564. Do you propose that the control over the embankment should be entirely taken away from the proprietors of the land and given to the board you have spoken about?
I do.

565. Does it amount to this, that you would prevent a proprietor from planting upon that bank?
Within the bank, and in what would be the flood-channel, I should prevent him from planting, because the evil effect of that is very apparent in the case of the Ouse below Earith. A considerable portion of the river bank of the Hundred Foot river has been planted with osier beds, and there is no doubt that in periods of flood they form a very serious obstruction to the passage of the water.

566. Then how would you provide for drainage outfalls through this flood-bank?
What is called the flood-channel should be preserved intact; no obstruction should be allowed to be formed within it.

567. But a proprietor who is living inside your flood-bank, the inner flood-bank you are speaking of, wants to claim his land, and wants an outfall to get to the river; what means would you propose for giving him that?
As for that small portion of land which is appropriated for the solum of the flood-channel, that could be drained in ordinary circumstances into the existing channel of the river.

568. There

568. There is a present bank to the river, and you propose to have a second flood-bank?
I will describe it to your Lordship. (*The Witness draws a sketch, and describes it to his Lordship.*)

569. I want to know whether you would allow a proprietor to cut through that bank (*pointing to the sketch*) without leave from the board?
No.

570. Lord *Penrhyn.*] You would require the same breadth of land to be appropriated for the high-level channel of the water in times of flood all the way down the course of the river, from its highest point down to its lowest point?
Yes.

571. You say you would allow of no obstructions in the course of that?
It must be preserved free of obstructions.

572. Therefore, your plan would necessitate the purchase of land the whole way down the bed of the river, of a sufficient breadth to allow the passage of flood water?
Yes, but that land will be available as grass land.

573. But it would be subject to re-division between one proprietor and another, according to your plan?
It might remain so far the property of the proprietor.

574. He would not be able to divide it from the property of his neighbouring proprietor, as I understand you?
I would allow no fences, certainly.

575. Therefore the whole of that land for the whole length of the river would be open, though belonging to different proprietors, from one to the other?
Except that temporary fencing might be put up during the summer months, but no permanent fencing of any kind.

576. Lord *Vernon.*] But always by a reference to the board?
Yes.

577. Lord *Penrhyn.*] Would not that be an enormous expense if that land was to be purchased subject to those conditions?
I think not, because in the great majority of cases it is grass land at present, and would simply continue as grass land, subject to the floods.

578. Lord *Vernon.*] You do not propose to change the ownership?
No, I do not.

579. Lord *Somerton.*] With reference to the Nene, I suppose you are aware that in some of the lands which are subject to very heavy taxation to the North Level Commissioners for drainage, in the summer months there is very often great difficulty about fresh water?
I am aware of that.

580. That would not induce you to modify any opinion you have given on the Nene?
It would not.

581. Lord *Penrhyn.*] Do you know the height of the bed of the river above Peterborough, above high-water mark down at the Wash?
Two or three feet.

582. *Chairman.*] I did not quite understand an answer that you gave; you said, in answer to a noble Lord, that you would supersede the powers of a rural sanitary authority; what powers have the rural sanitary authorities over the River Ouse at this moment?
I believe they have none as far as the Ouse is concerned.

583. When you said that you would supersede the powers of the rural sanitary authorities, what was passing in your mind?
I understood various local boards to be meant, irrespective of the sanitary authorities.

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584. Lord *Ker.*] You are well acquainted with the whole of the district of the Ouse, the upper district as well as the lower?
Not so well the upper district, above Peterborough.

585. Have you ever turned your attention to the storage of water in the higher districts?
I have. I think that that is a question which will have to be treated separately and distinctly from the drainage question, but it is a very important one. I believe that before any great length of time it will be found necessary to store the flood waters, so as to provide for irrigation during the summer months.

586. Do you think it will make no difference whatever to the floods themselves, or could it be done in such a way as to prevent floods?
It could; but it must be a separate matter.

587. Do you think it would be possible in that district to make arrangements for storage of water for irrigation during the summer months?
I believe at certain points it could be done.

The Witness is directed to withdraw.

MR. THOMAS COOTE, is called in; and Examined, as follows:

Mr. *T. Coote.*

588. *Chairman.*] You live at St. Ives?
Yes.

589. I believe you are a landed proprietor in the Valley of the Ouse?
Yes.

590. And Chairman of the St. Ives Ouse Floods Committee?
Yes.

591. May I ask you to tell us how that committee was appointed?
It was appointed by the landed proprietors and occupiers of lands between Huntingdon and Earith, between St. Neots and Earith, I may say, for the purpose of seeing what could be done to remedy the excessive floods to which we were subject.

592. And I think your experience lasts over a great number of years?
I have had a very long experience of the river; I have known it for more than 40 years.

593. Are you of opinion that the floods now are more frequent than they used to be, and continue longer when they do come than formerly?
Yes, I am; I think they do continue longer and are more frequent.

594. Is it your opinion that the capacity of the river to carry away its waters is gradually contracting?
Yes, it is contracting very considerably.

595. And is it your opinion that that is in consequence of the growth of weeds and deposit of silt?
Yes; in the winter there is a very largely-increased deposit of silt. In the summer time the weeds grow very much faster than they did, and as a consequence, the channel of the river is gradually filling up.

596. Do you believe that all that is owing to the improved system of drainage in the upper part of the country?
I would not say that all of it is; I think very much of it is. I think some of it arises from the neglect to keep the channels of the river clear; there is no authority to do that; and I think, also, that the evil is intensified by the improved system of drainage in the upland country.

597. I need not ask you; it is obvious that arable land must suffer, of course, from such an inundation?
Yes; there is more arable land under inundation than there used to be; the grass lands were only flooded at one time, but the area of land which

is

is subjected to flood is gradually increasing as the floods become larger in volume, and more frequent.

598. I suppose the floods on the grass land in winter time, provided the water does not stay a very considerable time, do not injure that land very much ?
It is not thought by practical men that the floods are injurious if they do not remain long ; but I apprehend, of late years, the floods have done permanent injury to many of our grass lands, in consequence of frequent and long-continued inundations.

599. You are acquainted with the whole of that part of the county ?
Yes.

600. Are there many water mills and sluices upon the part of the river to which your attention has been more particularly directed ?
Yes; there are some sluices and many water-mills on the river between Bedford and Earith.

601. Are these sluices built in the interests of the navigation ?
The sluices are built in the interests of navigation ; the mills, of course, in the interests of the millowners.

602. What has been the effect of the increased railway accommodation upon the navigation ?
The increased railway accommodation has nearly destroyed the navigation tolls, and as a consequence, it has rendered the owner of the navigation perfectly indifferent as to the condition of the river so far as laying out money and improving the bed of the river is concerned. He feels he has enough to do to keep up the sluices without laying out any more money.

603. Therefore it is no particular object to improve the bed of the river?
None whatever.

604. Because there is nothing to make use of it ?
But little.

605. Then as to the outfall of the river at Earith, how is that ; is that sufficient for the water that comes down to it ?
No, Earith is not the proper outfall of the Ouse ; it is not strictly correct to say that it is ; but it is the proper outfall for that portion of the Valley of the Ouse, which is drained by the Ouse. At Earith the Ouse is connected with artificial canals, and enters into the great systems of drainage of the fens, such as the Middle Level, the South Level, and the Bedford Level. Those various systems of drainage join the Lower Ouse at Denver Sluice, and two or three points below, and they come there under the care of commissioners who are interested in the outfall of the Ouse proper, or the Lower Ouse ; but so far as we are concerned, in the Upper Ouse, Earith is the outfall to which we look ; and that is in a very defective condition ; so much so that over the Hundred Feet River, which has been alluded to to-day, the bridges probably have only an area of waterway about one-half the area of waterway at St. Ives, which is some 12 or 13 miles higher up the river.

606. Then the upper part of the river would not be relieved unless there was a considerable enlargement of the outfall ?
On the contrary, it would be excedingly injured ; that is, the lower part of the Upper Ouse would be injured by any improvement in the upper part of the river, say at Bedford ; it would put the lands between Bedford and Earith in a very much worse condition, unless the outfall were improved ; also the area of the outfall requires doubling at Earith.

607. You have spoken of the St. Ives Ouse Floods Committee, which, I understand, was an association formed by gentlemen whose property was affected by floods ?
Yes.

608. Are there any river authorities at present invested with powers of taxation. First, I will ask you whether there are any in existence ?
There are no river authorities of any kind between Buckingham and Earith, which is our proper outfall.

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609. And therefore there is no power of taxation to meet any expenses that may be incurred?

None; the owner of the navigation is the only person perhaps who would have power to put a spade into the river, and that he has no inducement to do.

610. Earl of *Sandwich.*] Is there no power to compel him to execute works?

There is some legal question as to whether he must keep up the sluices; but if the owner of the navigation were compelled by law to cleanse the channel of the river, he would throw up the navigation.

611. We learn that he was bound to clear out the spill-water overflow?

I am not aware of that.

612. He has done nothing of that kind?

No, I think not.

613. Lord *Penrhyn.*] The upper part of that river is independent of the stream itself?

The Ouse is only navigable up to Bedford, or a little beyond.

614. Have you turned your attention to what would be the best mode of dealing with the Ouse, or a river situated as the Ouse is, first of all as to the area of jurisdiction; and secondly, what mode of taxation for keeping the river in proper order might be adopted?

I think, as far as I can judge, speaking only of the Ouse, that the proper plan would be to appoint a Conservancy Board of a representative character, a fairly and fully representative character, from one end of the stream to the other; there is no difficulty in the fen districts in adopting some such scheme as that, and I do not see why there should be any difficulty in the upland districts. If owners of certain quantities of land were, by virtue of their ownership, Commissioners, and they had a power to elect a board of management for the whole of the river, it appears to me that it would solve the difficulties of the question so far as the question of authority is concerned.

615. Then you would have each river have its own Conservancy Board?

Yes, I would, elected by the owners of land all along its course, including the whole of its water-shed.

616. Taking in the whole area with its tributaries?

I think so. I think the whole of the water-shed of each river might appoint a Board (that is to say, the Commissioners whom the ownership of land would constitute might appoint a Board) which would be perfectly effective to do the whole business.

617. You would make each river have its own district?

Yes, and I think the responsibility for the works designed and carried out on each river should be thrown upon the shoulders of those who spent their money about it. I do not quite agree with the idea of a Government Board in London as a Board of Appeal; I think it would create a lot of complication. So far as our fens are concerned, take the Middle Level, for instance, the Middle Level fen district is about 150,000 acres perhaps; the Middle Level has carried out a system of drainage, and spent about half a million of money, I think, and they have had no necessity at all to come to a Government Board, but they have done it under the provisions of an Act of Parliament, and the local taxation has been settled amongst themselves.

618. Lord *Somerton.*] And the Commissioners have been appointed by the landowners?

Every landowner in the Middle Level of, I think, 100 acres, is a Commissioner by virtue of owning that land, and he is a voter for a Board elected by these Commissioners, and that Board manages the whole district and manages it perfectly well, so far as I can see.

619. *Chairman.*] Then you would have one district for the Ouse, the boundaries of which would be set out in the manner you have described?

Yes.

620. What power of taxation would you give to that Board?

As far as the powers of taxing are concerned it is a difficult question rather, and

and one would hardly like to pledge one's self to details; but I should see no objection to define by Act of Parliament the proportion of taxation between the uplands and the lowlands, and the proportion which the inhabitants of towns and villages upon the banks of the river should subscribe.

621. You would have a Conservancy Board appointed, as you have described, with powers of taxation as defined by an Act of Parliament?

Yes, so far as I can see, I think that would be practicable.

622. What would you propose that the Act of Parliament should do in the way of setting out the mode of taxation?

I should give powers to tax the whole water-shed as well as the valley. The proportion of taxation might be defined. I do not know whether, in other rivers, there would be any reason why the proportion of taxation between the flooded lands and the lands which only send down their waters to the river, but do not suffer damage from it, should be on a different principle from that which would apply to the Ouse; but, so far as the Ouse is concerned, I think it would be a perfectly fair proportion that the lowland or flooded districts should be taxed in the proportion of twelve times the amount of the uplands.

623. That from your knowledge of the Ouse you think would be a fair proportion?

I do.

624. And you would make the towns and the villages contribute also in another proportion?

I would, something like to the extent of 6 *d.* per head on the population in the towns and villages upon the river, still speaking of the Ouse, with which I am acquainted; of course the various local authorities would pay it all in a lump.

625. So far for the area of jurisdiction and the mode of taxation; have you turned your attention at all to the propriety or possibility of storing water?

Of course in some villages it would be very important to store water; that is where there are clay lands and there are no means of getting good water upon the spot; whilst in other villages there would be no necessity whatever to store water, as they have abundance of good fair water. I therefore think that the two questions of drainage and storage water should be kept perfectly distinct, and I should be disposed rather to give the local authorities in these villages power to store water if they choose, and let it rest with them rather than with a general Conservancy Board, which should have nothing to do with the storage of water.

626. You would give the Conservancy Board authority over the river in the way of dealing with floods?

Yes, and I would keep the two questions quite distinct.

627. Are you aware what powers the rural sanitary authorities have to deal with water?

I do not think that the rural sanitary authorities have any power to deal with the rivers in any way; indeed the rural sanitary authorities are far too much accustomed to use the rivers, for the healthful condition of the rivers themselves.

628. Lord *Ker.*] You have said that you would give the proprietors upon the river and its affluents, a title to be represented at the Board?

I would make them electors, and they should have the power of electing the Board. I think you would have far too large a body to deal with if they were all on the Board.

629. You said those who lived in the lowlands and who might be most benefited by the works, should pay twelve times the amount of those who lived in the upland districts?

Yes.

630. Should you give them corresponding powers of election?

I should, in proportion to the contribution, give them corresponding powers of election. I should even go to the extent of making the Commissioners de-

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pendent more upon their annual contribution than upon their acreage if that would meet the case. Supposing, for instance, that the owner of 200 acres of land was taxed 10 *l.* a year, then I would make every person who was rated at 10 *l.* a year a commissioner or an elector, and I would allow him to vote for a board consisting of, perhaps, 20 or 30 members, who should have entire control over the whole watershed of that district.

631. Would you give that board compulsory power?
Certainly; if you give it only permissive powers you would never get the upland proprietors to tax themselves, because they suffer no injury now from the waters, although they contribute injury to their neighbours below them.

632. Then I suppose anything that was done under that system would be like the Parliamentary system, by a vote of the majority?
Yes, there is no practical difficulty about that.

633. But you said you would have no central board?
I would make it quite compulsory that the rivers as the main drains of the country should be kept in an effective condition. I would give powers of indictment to any person damaged by floods against the Conservancy Boards if they did not keep rivers and tributaries in a proper condition.

634. You would not give any power to any Government inspector to initiate proceedings?
No, I do not see the necessity for any Government inspector at all. I am certain that the landed proprietors in the valley of the Ouse would spend their money intelligently and carefully, and that they would need no Government inspector to interfere with them.

635. That might do in the valley of the Ouse; but what about a river with a large manufacturing town on it?
I am speaking of that part of the country only which I am acquainted with.

636. Marquess of *Ripon.*] Having suffered now from the want of any body having proper control over the river, has it ever struck you to apply for the appointment of a Commission of Sewers, or of a Drainage Board, under the Act of 1861?
I do not think that the provisions of the Act of 1861 are at all suitable to the object in view. We have no powers under the Act of 1861 to tax the inhabitants of towns at all; we have no powers under the Act of 1861 to take lands, or to do works outside the immediate district which we are dealing with. In dealing with the outfalls of the Ouse proper (I am speaking of the upper Ouse always), we should have to do considerable works outside the drainage district, that is in the country, between Earith and Denver, through which the Hundred Feet River runs; we should have to do very considerable works which the Act of 1861 has no power whatever to authorise us to do; we should have to spend some 30,000 *l.*, perhaps, or even more, at our outfall.

637. You do not consider that the Act of 1861 meets your case?
No, it is not suitable for any large drainage works whatever.

638. Lord *Ker.*] Has the body of which you are chairman, ever taken into consideration the best means of preventing floods?
We employed Mr. Abernethy to advise us upon the subject, and his report is here (*handing it in*).

639. Marquess of *Ripon.*] I understand you distinctly to differ from Mr. Abernethy's views with regard to the interference of a Central Government Board?
I do.

640. You heard his evidence?
I did.

641. And you do not concur?
I agree with his evidence as to the Conservancy Board. I do not agree with that portion of his evidence which would put it under the control of a Government Board; I think that would be an evil.

642. Lord

642. Lord *Stewart of Garlies.*] What is the number on the Board of which you are chairman?

I think about 25 or 26 gentlemen. We suffer from drought in the summer to almost as great an extent as we do from floods in the period of flood time; and certainly it is some evidence that the improved drainage of the country does send the waters down faster, in the first instance, because there are none to come when the rainfall is over, and we have a decidedly lower state of our river in the period of drought than we used to have, besides having a decidedly increased amount of flood during the rainfall.

643. Lord *Ker.*] You said that you considered the storage of water ought to be kept entirely distinct from the subject of floods?

Yes.

644. Do you not think that it might be possible to produce some effect upon the floods by a corresponding storage of water?

No; I think that the storage of water would act to so small an extent upon the area of the floods, that so far as that is concerned it is hardly worth consideration. At the same time I can conceive that it might be a very great advantage to many villages and towns to have storage of water nothwithstanding; but that it would divert from our main channel or river any water which is appreciable in time of flood I should not think; the population on our banks is not sufficient to do that; if we were in the neighbourhood of any large manufacturing towns or centres of population it might have an effect, but we have no towns besides Bedford having more than 4,000 inhabitants.

645. You are speaking only of the storage of water for villages, not for agricultural purposes?

For villages. I may say that I quite agree with the evidence which Mr. Abernethy gave about the evil of removing those mills; I think that the mills, so far from being an evil, are a distinct advantage if you will compensate the channel of the river in time of flood by subsidiary channels for the area of obstruction which the mills cause. They keep up the head of water in time of drought, which is exceedingly valuable to us; and if anyone were to sweep away all the mills on our stream the effect would be that we should run dry in summer.

646. Does not the jealousy between one millowner and another sometimes lead a millowner to keep his sluices closed longer than necessary?

I think that the common law rights of millers are pretty distinctly defined, and that the rule is very strict between themselves. So far as their own private interests are concerned they understand each other pretty well, but there is no authority in the interests of drainage to say when they shall allow water to run off and when they shall keep it up; and I think that the great advantage of these subsidiary channels which Mr. Abernethy proposes is, that self-acting weirs would be fixed upon those channels, so that at a certain height those weirs should cast themselves down. So far as the question of imposing the duty on the flooded lands of doing the works necessary to put the Ouse channel in a proper condition is concerned, I think if we wait until the flooded lands proprietors are able to bear the weight of the works that require doing, we shall never have them done at all. I am a lowland proprietor myself to a small extent, but I have ten times as much land in the uplands, and therefore I am not speaking of the matter as it affects me, but I am quite sure that the flooded lands proprietors would not be able to meet the necessary costs to put the channel of the river and the outfall into a good condition. The people on the Nene have had experience on this head, and so far as I am informed, they have spent 150,000 *l.* there; they have taxed the lands to the very utmost power of endurance, and they have not succeeded in doing their work, having only an area of taxation slightly above the area of the flooded lands. We are not at all disposed in the Ouse to imitate that example; we simply should not touch the question without a combination of all interests.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Monday next, at Twelve o'clock.

Die Lunæ, 7° Maii, 1877.

PRESENT:

Lord President.	Lord Vernon.
Duke of Bedford.	Lord Stewart of Garlies.
Duke of Northumberland.	Lord Meldrum.
Earl of Sandwich.	Lord Ker.
Earl Cowper.	Lord Penrhyn.
Earl Stanhope.	Lord Somerton.
Viscount Eversley.	Lord Winmarleigh.

The LORD PRESIDENT, in the Chair.

Mr. SAMUEL USHER ROBERTS, is called in; and Examined, as follows:

Mr. *S. U. Roberts.*
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647. *Chairman.*] You are, I believe, the Assistant Commissioner of Public Works in Dublin?
I am.

648. And you are well acquainted with the provisions of the General Drainage Acts that were passed in 1842, 1845, and 1846?
I am fully acquainted with them.

649. Can you give the Committee information as to the mode of proceeding under those Acts?
The Act of 1842 was the first General Drainage Act for the promotion of arterial drainage works in Ireland. It was an enabling Act in its principle, requiring the voluntary initiation of the parties interested in any district, and affording the service of the Commissioners of Public Works for its subsequent administration. It required that the assent of the proprietors of two-thirds of the acres of land to be drained should be obtained, to admit of the execution of the works, and that the necessary funds for the payment of all the preliminary expenses should, in the first instance, be provided by the promoters of the measure. That Act also implied that the funds for the execution of the works were to be raised by the exertions of the parties interested in the district.

650. Then as to the mode of executing the works, how was that to be done?
The works in every case were executed by the Commissioners of Public Works, by agents employed under their direction.

651. How were they to be satisfied of the completion; was there any mode of making them acquainted with the manner in which the works had been carried out?
Yes. On receiving a memorial from the proprietors of a district, the Commissioners of Public Works, under that Act, appointed an engineer to make inquiries, and to report upon the project generally; he reported upon the cost of the works necessary to effect the drainage of the district, and also the extent to which the lands in it would be benefited; that report, together with the plans and schedules which accompanied it, containing all necessary information for the proprietors who were interested, was lodged for public inspection. If the

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proprietors then, having had time to consider the project, assented to the extent of two-thirds of the acres which it was proposed to improve, the Commissioners of Public Works were empowered, after the publication of certain notices, to proceed with the execution of the works. In every case under that Act the works were carried out by the Commissioners of Public Works.

652. And then how was the money repaid?

On the completion of the works they make an award declaring the amount that had been expended, together with the incidental expenses in connection with the execution of the works, and determining the amount that was to be repaid by each division of land included in the district. That money was repaid by an annuity extending over a period of from 18 to 25 years, the number of years being determined by the extent of the annual improvement which had been effected by the measure.

653. Earl *Stanhope.*] I suppose a rate was imposed by the grand jury in each county?

No, the grand jury did not take any part in the drainage projects; it was only where the improvement of navigation was carried out in connection with drainage works that the grand jury was brought into action.

654. *Chairman.*] Then the repayments extended over a number of years?

Over a number of years; the number of years being regulated by the benefit derived from the project, care being taken as far as possible that the annual instalment in repayment of the principal and interest of the money expended in carrying out the works did not exceed the yearly benefit which resulted from the improvements.

655. What was the general result of the working of that Act?

That Act of 1842 was amended subsequently with a view of removing difficulties which arose in carrying out the works. It was amended by the 9 Vict. c. 4, by which some alterations were made. The assents of the proprietors necessary to give effect to the operations of that Act was reduced from two-thirds to one-half; and there were also other facilities for carrying out the works with a view of giving relief at that period, when there was a famine in Ireland. The general results of the works carried out under those Acts of Parliament were these, 266,736 acres of land were drained at a total expenditure of 2,390,612 *l.*

656. Have you any estimation of the increased value of the land caused by that drainage?

The increase in the annual value which resulted from that expenditure was 74,502 *l.* per annum. That embraced all the districts in which works were executed up to the year 1853.

657. Lord *Winmarleigh.*] How was that tested?

The value was tested in this way. Before any works were carried out valuations of the land were made in its deteriorated state, and an estimate made of the increased value which would result from the drainage operations. On the completion of the works an award was made by the Commissioners of Public Works, in which the amount chargeable upon each section of land was declared. The Commissioners held meetings in order to hear any objections that were taken to that award, and received evidence with reference to them, and having received that evidence, they fixed and determined the increased value and the amount chargeable upon the lands, that amount chargeable being in every case in proportion to the increased value resulting from the works.

658. *Chairman.*] You quoted from the report just now, I think?

Yes.

659. Perhaps you will give us the reference to that report?

The report is the Forty-fourth Report of the Commissioners of Public Works in Ireland, at page 48.

660. Lord *Penrhyn.*] Did these beneficial results apply solely to the drainage, or was there any supply of water to towns included in that expenditure?

It applied solely to drainage.

661. Lord *Vernon.*] Does this beneficial result include maintenance?
No; maintenance was a subsequent and distinct charge; that charge did not arise until after the declaration fixing the amount chargeable upon the lands was made.

662. Duke of *Northumberland.*] Then if I understand you rightly, the value affixed to these lands was theoretical; that is to say, it was only an estimate of what the value of the land would be, not valued by any crop, or anything of that sort?
No, not valued by any crop. The value of the land in its deteriorated state was determined and fixed by competent valuators. The estimate of the increased value which would result from the improvement, of course was theoretic; but it was based upon the experience of the most competent valuators who could be procured in the country, and who had knowledge of previous works of a similar character.

663. Lord *Penrhyn.*] That 74,000 *l.* which you mentioned, would be about 2½ per cent. upon the outlay, would it not?
It would be a little more than 2½ per cent.

664. Lord *Ker.*] That was the expenditure up to 1853?
Yes, that was the expenditure up to 1853; that was the result of the operations of the Act of 1842, and the Acts amending it.

665. *Chairman.*] That is to say, 1842, 1845, and 1846?
Yes.

666. That is the estimated increase in value. You were going to tell us what provision there was for the maintenance of these works?
In the first instance, I would wish to explain that a portion of that expenditure was chargeable to the counties for public works, for rebuilding bridges, and other improvements necessarily made during the drainage operations, such as improvements to the roads or bridges of the country, and which were under the provisions of the Act chargeable to the counties. Of that expenditure which I have stated previously of 2,390,612 *l.*, 152,180 *l.* was charged to the counties for such improvements. I should also wish to explain, in reference to that very large expenditure, that a great portion of that took place during the famine period of 1845, 1846, and 1847. The works were hurried on with a view of giving employment as largely as possible during that period, and they were carried out at seasons of the year when it was very imprudent to carry out works of the kind, involving heavy expenses in unwatering; but at the time the Commissioners of Public Works had no option; they were obliged to proceed with these works, which were in a large number of instances undertaken with a view of giving employment; and the expenditure was consequently very much in excess of that which would have taken place under other circumstances.

667. Duke of *Northumberland.*] I do not clearly understand what provision there is for the maintenance of the works?
The Act, after the execution of the works, provided that they should be maintained; each district was handed over, on completion, by the Commissioners of Public Works, to trustees elected from proprietors in the districts, and they were bound, under the provisions of the Act, to maintain the works, and had the power of levying money to cover the cost.

668. *Chairman.*] How long did those Acts that you have quoted continue in operation?
In 1853, I think it was, the Treasury instructed the Commissioners of Public Works that they would undertake no further liability in connection with works carried out under those Acts, further than to complete the works which were then in progress; and all operations under the provisions of those Acts then ceased.

669. Then what happened between 1853 and the next time that any legislation took place?
No new arterial drainage works were carried out during that period?

670. Was that a period of 10 years?
A period of 10 years.

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671. Then in 1863 an Act was passed?

In 1863 an Act was passed by the Government; that Act resulted from a Report of the Select Committee of the House of Commons upon a Bill introduced by Colonel Dixon, I think, in 1862; the measure was taken up by the Government, and in 1863 another General Drainage Act applicable to Ireland was passed.

672. And there was also, I think, an Act of 1865?

There was also an Act of 1865 amending that of 1863, and other Acts were subsequently passed, amending it in some respects.

673. So that, practically, what you are now working under are the two Acts that were passed in 1863 and 1865?

Yes.

674. How did they interfere with the practice that had prevailed up to 1853?

The mode of procedure was varied very considerably, but chiefly in reference to the mode of carrying out the works. The works which under the previous Acts had in every instance been carried out by the Commissioners of Public Works, under the Act of 1863, are carried out by Local Drainage Boards, who are elected by the proprietors interested in the district.

675. And are the assents the same that are required under the new system?

No. Perhaps if I explain the general mode of proceeding under that Act it may facilitate the understanding of the subject. The administration of the Act of 1863, subject in some respects to the control of the Commissioners of Public Works, is vested in District Drainage Boards; and these Drainage Boards have the same power to execute works as those which were vested in the Board of Works under the Act of 5 & 6 Vict. c. 89. The course of procedure is this: a petition is presented to the Commissioners of Public Works, defining the district to be drained, accompanied by maps, schedules, plans, &c., showing the works to be executed and the land to be drained, and the reputed proprietors and occupiers of those lands; also an estimate of the cost of the proposed works, and the proportion in which the lands to be improved shall contribute towards repaying the expenses. Copies of these documents are lodged by the petitioners in a convenient place in or near the district; they are open for public inspection for three weeks; notice is published in the local newspapers and served upon the proprietors stating that the plans are so lodged, and that it is the intention of th petitioners to have an inspector sent by the Commissioners of Public Works to the district to make inquiry into the project, and to hear any objections to it. At the expiration of a period of three weeks the Commissioners of Public Works send an inspector, whose duty it is to hold an inquiry, hear objections, inspect the district, and report generally upon the project, and the propriety of constituting the district. That inspector having reported the result of his inquiry to the Commissioners of Public Works, they transmit a copy of his report to the petitioners, who lodge it with the clerks of the unions, and publish a notice to that effect. Objections to that report, and the plans, &c., revised by the inspector, so far as may be necessary, may be made within one month from the lodgment to the Commissioners of Public Works, who, having considered them, may, if satisfied of the propriety of constituting the district, and that the proprietors of two-third parts of the value thereof are in favour and have assented to the project, make a Provisional Order, which Provisional Order they are empowered to take steps to confirm by Act of Parliament. When so confirmed the Local Drainage Board may proceed with the execution of the works. They cannot depart from the plans which have been approved of by the Commissioners of Public Works, nor can they exceed the estimate which has been approved without authority from the Commissioners; but in no other respects is the execution of the works under the control of the Commissioners of Public Works.

676. Is there any number of members fixed for the Local Drainage Boards?

No; the Commissioners of Public Works fix the number of the Drainage Board in the first instance; it varies; some districts are very small, and five members may be sufficient; others are very large, extending over large tracts of country, and

and there the number is increased. They have the power, under the 13th section of the 26th and 27th of Victoria, chapter 88, of fixing the number that is to constitute the Local Drainage Board.

677. You say that the Commissioners of Public Works appoint those who are to form the Local Drainage Board; are they limited in the choice at all?
They nominate them in the first instance; after the period which the Act specifies the Drainage Boards are elected by the proprietors in the districts.

678. I did not mean as to the number, but whether they must be possessed of any property in the country?
Yes, their qualifications are fixed by the same section of the Act.

679. Then once this Drainage Board is constituted by the Commissioners of Public Works, it is left to them to execute and carry out the works?
It is left to them to carry out the w orks.

680. And within any particular fixed sum?
They have no power of exceeding the estimate which has been approved of by the Commissioners of Public Works without their authority; nor have they power to deviate from the works as approved by them in the first instance, and as laid down by the plans lodged, without authority.

681. How do they get money for executing the works?
The Commissioners of Public Works lend the money, that is to say, the Government lend the money in every case.

682. At any fixed interest?
At 4 per cent.

683. Duke of *Northumberland.*] How is that money repaid; is it in the same way as you described before?
In the same manner, and under the same course of proceeding as in the former case.

684. *Chairman.*] And what takes place on the completion of the works when the Local Board are satisfied that the works are finished?
The Commissioners of Public Works then publish a draft award declaring the amount of expenditnre, and the proportions in which that expenditure is to be repaid, by the several portions of land included in the district. They hold a meeting, of which due notice is given to hear objections to that draft award, and having heard those objections, they amend it if necessary, and then make their declaration, declaring the amount which each portion of land in that district is chargeable with. That is enrolled, and the money is then repaid by an annuity extending either over 22 years or over 35 years.

685. What you are now speaking of is what takes place under the authority of the two Acts passed in 1863 and 1865?
Yes.

686. I understood that in 1853 all operations, except those that were then immediately in work, were suspended?
Yes.

687. That nothing was to be undertaken after 1853 under the provisions of the former Acts?
Quite so.

688. Then in 1863 and in 1865, two Acts were passed which are the Acts under which now all drainage is carried on in Ireland?
Yes.

689. Lord *Sandwich.*] Was the Act of 1853 in consequence of the famine?
There was no Act of 1853.

690. It was then that all the Drainage Acts which were enforced during the famine were suspended?
Yes.

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691. All those works were found useless, in fact?
Not found useless; they were all brought to completion, and the result given in that statement which I have referred to as to the expenditure and the increased value.

692. Many of the works in Ireland at that time were undertaken for the sake of giving employment to the people, without reference to utility?
There were none undertaken as drainage works without reference to utility.

693. But they were practically, many of them, useless, were they not?
Not useless; they were all of them useful to some extent, but they were not of that remunerative nature which would, under other circumstances have been undertaken.

694. Therefore, the after Acts of 1862 and 1865 were to remedy the deficiency of the first Acts?
They were.

695. Lord *Penrhyn.*] As to the operations undertaken under those first Acts, you have stated to us that the amount of expenditure in works of that sort was nearly three million; you also told us that the estimated increase of value of the land affected was 74,000 *l.*, which you said was about $2\frac{1}{2}$ per cent. upon the outlay; were the lands charged for the repayment of that amount?
No, not the repayment of the whole of that amount; a large amount of money was remitted by Government.

696. Will you state how much was remitted?
It is given in the return which I have here; a sum of 1,337,868 *l.* was remitted. There was a sum of 152,180 *l.* charged to the counties for improvement of public works; the balance, which amounted to 900,563 *l.*, was charged on the lands; in fact, the actual charge on the lands for all works executed under the General Acts of 1842 and 1845, amounted only to about 3 *l.* 7 *s.* 6 *d.* an acre.

697. Which is still charged?
It was charged; in some districts it has been entirely paid off. The total amount of that repayment on account of that expenditure up to the 31st March 1875, was 1,233,074 *l.*

698. Lord *Ker.*] It must be almost entirely paid off for those works that were undertaken previous to 1853, because you gave the limit as from 18 to 25 years?
It is not all paid off; there are some instalments still due. All the money charged upon the counties has been repaid, but not all on the lands.

699. Some must have run for more than 25 years in that case?
Yes, many of them did; some of them, I think, ran to 30 years.

700. *Chairman.*] Under the Act of 1863 and 1865, what provision was there for the maintenance of the works?
The same provision as was contained in the former Acts; the Local Boards had the power of levying the necessary funds for the maintenance of the works.

701. And supposing that they neglected to do that, was there any remedy?
Yes; in many districts the trustees who are charged with the maintenance of the works did neglect them, and that led to the introduction of an Act in 1866, where in cases of neglect, any proprietor in a district had the power of memorialising the Commissioners of Public Works, and they, after due inquiry, had the power of executing whatever works were necessary for the maintenance of the works in the district, and charging that expenditure upon the lands in the same way as the original cost had been.

702. Duke of *Northumberland.*] That is to say, according to the increased value?
Yes, on the basis of the increased value.

703. *Chairman.*] Upon the whole, would you say that this system has worked well in Ireland?
Yes, this Act of 1873 has worked very well indeed. The result of the working

ing of that Act may be briefly stated thus: up to the 31st of March 1876 awards have been made in 22 drainage districts which had been carried out under the provisions of that Act; 51,064 acres of land have been drained; the increase in the annual letting value of those lands is 9,563 *l.*; the total expenditure in the execution of the works, including interest and all incidental expenses, was 155,101 *l.* Of that sum 153,006 *l.* was charged on the lands drained, being an average of about 4 *l.* 18 *s.* 6 *d.* per acre.

704. You say that something like 9,000 *l.* was the increased value of the land; what was the value of that land before those works were undertaken?

I am not able to state that; I can obtain the information, but I have not got it here.

705. You do not know, perhaps, whether it doubled the value of the land?

It has not doubled the value of the land; they have increased it about one-third, I should say, on an average.

706. Duke of *Northumberland.*] At what rate was the money repaid; at 4 per cent.?

At 4 per cent.

707. *Chairman.*] Have you any information which would enable you to say whether this system of drainage in Ireland is generally satisfactory throughout the country?

This system has worked, I think, very satisfactorily. I have had considerable experience of its working myself, and it has worked very satisfactorily indeed.

708. Lord *Winmarleigh.*] Has it been tried in the valley of the Shannon?

No.

709. Why has it not been tried in the valley of the Shannon?

The difficulties in connection with the improvement of the Shannon are caused by the connection of navigation with drainage.

710. Will you describe those difficulties?

It is a subject which I am not very well acquainted with further than the reports which have been published.

711. Do you know the measures that have been attempted for the drainage of that vast district?

I do, generally.

712. Will you describe to the Committee what measures have been attempted for the purpose of carrying out that drainage?

The channel of the river throughout the greater portion of its length was improved and enlarged, and with a view of rendering it more capable of carrying off the flood-waters, that has been done in connection with the navigation; and it was the connection with the navigation which created the difficulty in designing works with a view of making it an effective drainage.

713. Earl of *Sandwich.*] Are you acquainted with the Morning Star River?

No.

714. Lord *Winmarleigh.*] In regard to the attempt which has been made to drain that large district of the Shannon, have not the Government themselves offered a sum of money on one or two occasions to assist in that drainage?

Lately the Government did offer a grant of 100,000 *l.* towards the works which were contemplated for the improvement. I may perhaps explain that Mr. Bateman made a report upon the improvement of the Shannon, and submitted an estimate of the cost of the works necessary for the relief of the land, and Government proposed to give a contribution of 100,000 *l.* towards the cost of those works, the remaining portion of the cost being chargeable upon the lands to be improved.

715. That offer of the Government, I believe, was declined?

It was.

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716. Do you know on what grounds?
The proprietors did not think that the increase in value which would result to their lands would be proportionate to the cost which would be chargeable to them.

717. Do you know what portion of the proprietors objected; the upper or the lower?
No, I cannot say; I believe it was very general throughout the district.

718. And that has been entirely given up?
I believe it has; it has not been stirred during the last year.

719. *Chairman.*] All work connected with the Shannon is under an Act by itself, applying to the Shannon alone?
Yes.

720. Duke of *Northumberland.*] As far as I understand, none of these particular areas of drainage have been laid out by the Commissioners; they have all been done piece-meal, according to the will of the proprietors on the spot?
Very much according to the will of the proprietors; of course in many instances the Commissioners of Public Works enlarged the district; where local difficulties arose, or where it was necessary for the drainage of the lands which the proprietors were anxious to carry out, to extend the works to lower reaches of the river, then the district was extended by the Commissioners of Public Works.

721. Lord *Penrhyn.*] All these later Acts originated in the application of owners or people interested in the district?
In every case.

722. And you told us, I think, that the number on the Boards was confined to nine?
No, I see it is fixed in the first instance by the Commissioners of Public Works; the first Board retires from office at the period fixed by Act of Parliament, the subsequent Boards are elected by the proprietors of the district.

723. According to the size of the district?
According to the size of the district.

724. Is there any difference in the qualifications of the members of those boards according to the size of the district, or is it uniform throughout the whole?
I think it is uniform throughout the whole.

725. Have you had any disputes on the part of the owners with regard to the estimated increase of value to their lands?
Yes, there have been numbers of cases where they have objected to the draft award.

726. So as to operate in any way injuriously towards the working of the system?
No, not to that extent.

727. Now, with regard to the drainage, you have told us that the value of the lands has increased about one-third; what effect has the drainage of these lands had upon the rivers as causing floods; can you give any information on that point?
In some cases the result has been to increase the floods in the rivers into which the districts have their outfalls.

728. Therefore, though it has drained the land, it has transferred the water to the river in a way that has caused floods to the valley of the river?
In some cases it has, but not in my opinion to the extent generally supposed.

729. Have there been any works undertaken by Boards under the same Act of Parliament for getting rid of the floods in the rivers caused by this drainage of the upper lands?
Yes, there have been cases where it was found that the drainage of upper lands so increased the rapidity of the discharge from those lands that it was necessary to make provision for that increased flow of the water in the river below,

below, and in that case such works as were thought necessary to effect that object have been executed and included in the district drained.

730. Do you mean that they have been associated, so to speak, with those owners up in the upper district whose lands have been drained, and who have to contribute to the expense of carrying out the works necessary for getting rid of the floods below?
Yes.

731. Under the same Act of Parliament?
Yes.

732. And by order of the Commissioners of Public Works?
Yes.

733. *Chairman.*] In point of fact, nothing can be done without the authority of the Commissioners of Public Works?
No, under this Act nothing can be done without the authority of the Commissioners of Public Works.

734. How many landowners does it require to put them in motion?
One proprietor may put them in motion; one proprietor may present a petition.

735. He may present a petition to the Commissioners of Public Works stating that he believes a certain portion of the area requires to be drained?
Yes.

736. And then do they send an inspector down to report upon the district?
They send an inspector down who is not an officer of their own, but, generally speaking, the most eminent engineer that they can employ and who is conversant with subjects of the kind. They send him down to hold an enquiry, to hear objections, and report upon the scheme submitted.

737. If they think, upon the report so made, that a case is made out for drainage, then the Local Board is set up?
Yes.

738. Lord *Penhryn.*] It may be compulsory in that case upon the lower districts, may it not?
It is not altogether compulsory, because the Board of Works do not make the order unless the proprietors of two-thirds of the value of the whole district assent to the works.

739. *Chairman.*] They send down an inspector, and he reports whether it is necessary that the district should be drained?
Yes.

740. Then the Commissioners of Public Works obtain the opinions of those who live in the district?
Yes; the proprietors who are interested, and who will have to repay the money; and if two-thirds of the value agree, it is done. In the former Act it referred to acres; in this Act to value.

741. If two-thirds agree then a Local Drainage Board is set up?
Yes, a local drainage board is appointed then.

742. And I understand that they have power to drain the river as well as the land, supposing the river becomes flooded by reason of the drainage which is caused by the Drainage Board?
Yes, they have full power to execute all works necessary for the drainage of those lands, and if the Commissioners of Public Works think that the enlargement of any river channel below the immediate district which is drained is necessary, they have the power of including those works in the district, and then it becomes compulsory on the Drainage Board to carry out those works.

743. Lord *Ker.*] The primary object is drainage, not prevention of floods?
The primary object is drainage.

744. Earl *Stanhope.*] Have you power to make embankments?
Yes, or any works necessary for the drainage.

 745. And

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745. And do you believe that embankments prevent floods?
In some cases it is the only way in which works can be carried out at an expense at all commensurate with the increased value of the land.

746. We have heard in evidence that occasionally embankments in one part of the river will cause floods in another; supposing the upper part is embanked, the lower part may be flooded?
In such cases the effect will be, that floods will be sent down with greater rapidity, inasmuch as the reservoir available for their detention is reduced.

747. It need not necessarily be narrowing the channel. In the evidence we had on Thursday, one of the witnesses said that he thought the embankments should be a certain distance away from the banks on each side of the river, not actually on the banks of the river, but some little way off; do you think that is necessary?
The measure in which the floods will under such circumstances be increased in the lower reach of the river is altogether dependent upon the extent to which the reservoir available for their detention in the upper district is reduced. If water, instead of accumulating on lands in the upper district, must be discharged, as the rainfall takes place, it will be discharged in a shorter period with greater rapidity, and therefore in greater volume.

748. In the case of ordering an embankment, do you insist on the embankment being actually on the edge of the river bank, or may it be a little further back?
The position of the embankment is generally determined by the size of the channel necessary for the discharge of the floods, and if it is necessary to remove the bank further in upon the land, of course that arrangement is made.

749. *Chairman.*] But has this Local Board, that is set up in this way, jurisdiction over the whole of the river?
No, only within the limits of the district.

750. And what defines the district?
The Commissioners of Public Works on the plans and map which they approve of define the district and the extent of it.

751. Then it might so happen, might it not, that a portion of the river was made into a district, and that all the works that we carried on within that district might be injurious to another part of the river outside the jurisdiction of that district?
It may so happen, and has, I am of opinion, in some cases.

752. Then what would be the remedy for that?
The only remedy that I can see for that is, that the entire of a river should be formed into one district, that it should be subdivided into sub-districts, each sub-district bearing the charge of its own drainage, and that proportion of the cost of any works in the improvement of the channels below, necessary for the discharge of its flood waters to the outfall, without increased injury to adjoining lands.

753. Then to that extent you would think that the system that prevails now in Ireland is not a satisfactory one which divides the rivers into districts?
It is the only general system in which arterial drainage works could be carried out in Ireland. Efforts have been made to induce the proprietors in large cases to agree to include the whole of a river and its tributaries in one district; but it has been found impossible to get that co-operation between so large a number of proprietors, with so many varied interests, which is necessary to enable the Act to be carried out.

754. Then do you think that in Ireland the system you have suggested of having one district for a whole river, and that district divided into sub-districts, would not answer?
I think it would be the soundest in principle, but I am afraid it would be found very difficult to carry it into operation; it would be difficult to get the proprietors to agree to a work of that extent.

755. Lord *Penrhyn.*] You have spoken of the good effects of drainage on the land in the upper parts of these rivers; but at the same time you say that the effect

effect of that drainage is to bring the water down more rapidly, and to flood parts of the same river lower down in other districts below; those may perhaps be beyond the limits of the original district?

Yes.

756. An evil then is brought upon them, diminishing perhaps the value of their land to the same extent to which the drainage benefited the land in the upper portions. Then what is the practice with regard to that evil below; are those owners of the lands above who have caused that evil to the owners of those lands below to pay for the work done, or are the owners of the lands below to be charged for the expense of remedying the evil which has been brought upon them by the drainage above?

In any case where it is very clearly shown to the Commissioners that such a result would take place to an extent which would practically be an injury to the lands below, they would decline to sanction the execution of the works; there are many cases where, though that result would take place to some extent, it practically causes no increased injury to lands already subject to floods; and in that case the Commissioners have sanctioned the works where the proprietors have not been willing to form the entire area into a district.

757. That has not met with much opposition?

I know only of one case where it has met with opposition.

758. Earl of *Sandwich*.] Then practically in Ireland the Act of 1863 has not been carried into effect, because the proprietors have not all agreed?

In 53 districts the Act of 1863 has been carried out in Ireland. I do not mean that the entire river; each district does not constitute an entire river.

759. Lord *Ker*.] If the assent of two-thirds of the proprietors is obtained the expense becomes compulsory upon the one-third who might disagree?

It does.

760. Have they no remedy whatever?

They have no remedy.

761. No appeal?

No.

762. Earl *Cowper*.] Do you know whether great discontent has been caused by the system of rating?

No, I have not heard of any case where there has been any.

763. It has always worked smoothly, has it?

Of course objections have been made to the rating; there are isolated cases where occupiers of land and proprietors have thought they have been charged too much, but I do not think there has been any discontent. The Act has worked exceedingly well, as well as any Act of the kind could work, I think.

764. Lord *Ker*.] From your experience, would you think that if under a more general Act it were provided that Boards should be formed for each entire river and its tributaries, there would be much opposition on the part of the landowners against such a system?

Where you take in an entire river and its tributaries into one district this difficulty arises, that the lands on the tributaries can probably be drained at a very small expense per acre, but those upon the main channel will cost a very large sum per acre, and therefore the proprietors of lands on the tributaries decline to agree to the execution of works which, if charged on the basis of increased value alone, would saddle their land with an undue cost; therefore they object to form a portion of a district constituted of an entire river and its tributaries; and unless some means could be found for relieving them from an undue charge, there would be no possibility of getting them to consent.

765. You think if such a system could be devised it would be the right one?

If such a system could be devised it would be the sound one on which to carry out arterial drainage works. Every sub-district ought to have the full benefit and advantages of the facilities which it in itself possesses for relieving itself from water, and it should not be made to contribute unduly towards the works necessarily carried out along the main river channel.

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766. I think you have suggested that you must have a Board for the main channel of the river with sub-boards?

No, I would make it one district under the control of one Board, but that district being divided into sub-districts in which the charge upon the lands would vary in proportion to the natural facilities which the different sub-districts had of drainage.

767. You would not have Boards for each of those sub-districts?

I would not have Boards for each of those sub-districts, but one Board for the whole.

768. Earl *Stanhope.*] Would you rate fishing rights for the purpose of this drainage?

I think so; fisheries are very largely improved in some cases of drainage operations, and they ought, certainly, to contribute.

769. Lord *Somerton.*] Could there be any difficulty in apportioning the rate according to the benefit conferred upon each different district. I understood you to say just now that one difficulty to contend with would be, that people living on the tributary stream could drain at a much less cost than those who lived on the main river. Surely there would be no difficulty in apportioning that rate according to the benefits conferred?

Do I understand your Lornship that you would apportion the whole cost of the work in a district upon the land in proportion to the benefit conferred upon each acre.

770. Yes?

I do not think it would be fair, inasmuch as the drainage of lands on tributaries could in many cases be effected at a small cost per acre, and I think it would be hard that they should be charged on the basis of benefit conferred, with their proportion of the cost of the whole works. The cost of drainage of an entire district, including the main channel of a river, might come to 8 *l.* or 10 *l.* an acre, while some of the tributaries very likely could be drained at a cost of 3 *l.* or 4 *l.* per acre.

771. Could you not rate each proprietor according to the benefits he derived individually?

Then you would, in such cases as I have referred to, make a proprietor on a tributary pay a portion of the cost of the works necessary to improve the land of a proprietor on the main outfall.

772. Then, in fact, I gather that you think there would be difficulty if you were to have a different rate for different parts of the district?

There would be difficulty in carrying it out.

773. Now, with reference to another point that Lord Stanhope touched upon just now, have you any personal knowledge yourself of any cases in which it has been attempted in Ireland to restrain floods by means of embankments?

No.

774. Lord *Vernon.*] You said just now that the land was liable to a second charge for maintenance?

Yes.

775. And possibly a third and a fourth?

It is liable to the annual charge for maintenance; it is necessary to execute certain works for the maintenance of the district every year, and a maintenance charge is levied every year for that purpose; that forms a charge in addition to that made for repayment of the principal and interest of money expended upon the execution of the works in the first instance.

776. So that the charge for the particular work may go on for an indefinite time really?

The charge for maintenance will go on for ever, because the channels of a river and its tributaries and drains must be maintained, and if they are not by the trustees of the district, they should be by the occupiers of the land.

777. You were speaking at that time of land drainage?

Yes.

778. You

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778. You would, under the two Irish Acts of 1863 and 1865, maintain land drainage in that way; that is to say, cleaning out outfalls, or anything of that kind?

The works which have been executed for the drainage of the land of the district are subsequently maintained by the trustees for the district; and to provide funds for the execution of those works an annual charge is levied, called the Maintenance Charge, a permanent charge on the property.

779. Duke of *Northumberland.*] Have any towns been affected by these drainage works?

No.

780. And, therefore, the question of assessment in towns has never been raised?

It has never been raised in Ireland.

781. Lord *Penrhyn.*] Can you name many of the districts in which these works have been carried out successfully; I mean general works affecting the whole course of the river?

Yes, several. There is a very large district in the West of Ireland called the Lough Corrib district; that was a work in which the improvement of navigation and mill power was connected with the drainage works, and in that it was carried out in the entire district successfully.

782. *Chairman.*] Is there any system of storing water for villages or towns connected with drainage in Ireland?

No works of that character have been executed in Ireland.

783. Lord *Penrhyn.*] Have you not some control over the works for the supply of Dublin with water from the Wicklow hills?

That was altogether for the supply of Dublin with water, not in any way connected with drainage operations.

784. Lord *Ker.*] The evidence you have given to the Committee to-day has been chiefly with reference to the improvement of the land by drainage?

Yes.

785. Not with reference to the improvement of land by the means of prevention of floods?

No; works of that character have not been carried out in Ireland; I mean the construction of reservoirs for the purpose of preventing floods.

The Witness is directed to withdraw.

Mr. RICHARD BOXALL GRANTHAM, is called in; and Examined, as follows:

Mr. *R. B. Grantham.*

786. *Chairman.*] You are a Civil Engineer, I believe?

Yes.

787. And you live in London?

Yes.

788. You have had very considerable experience in works connected with drainage?

Yes, I have.

789. Were you appointed by Sir George Lewis to assist Sir Henry Thring in drawing up the Land Drainage Act of 1861?

Yes, I was.

790. Were you made an inspector by the Inclosure Commissioners under that Act and under the Drainage Acts?

Yes, I was.

791. And you have inspected all, except one, I believe, of the cases under the Land Drainage Act of 1861?

Yes, I have.

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792. Have you got any list of the applications that have been made under that Act showing what works have been done under it?
The Witness produces a list and hands it to the Chairman. (Vide *Appendix.*)

793. The Land Drainage Act of 1861 was, I suppose, as its name implies, merely an Act for the draining of land?
That is all.

794. And had nothing whatever to do with floods?
No, it had not specifically.

795. What is your opinion of the Act of 1861; how has it worked, according to your experience?
It has not worked so well as it might have done. When it was first projected by Sir George Cornewall Lewis, he endeavoured to carry out the original system of Commissions of Sewers, but to modify that power; and they have included it in the Land Drainage Act, and has established another system. The two systems (I may call them systems) of Commissions of Sewers and elective drainage districts were constituted under that Act. They were nearly the same in point of administration, except that the one, that is the Commissioners of Sewers, were appointed for life, and under the Sign Manual the elective drainage boards are elected once a year. They have certain qualifications; the qualifications, as far as I have been able to understand it, and from the opinion of lawyers, are very similar. The qualification for a Commissioner of Sewers was established by the 3 & 4 Will. 4, s. 1. The qualification of a member of a District Board was the possessor of so many acres in the district ascertained, as near as we could ascertain it, in the holding of the particular person. The mode of proceeding, as far as the Inclosure Commissioners were concerned, was very nearly the same as to constituting a Board or Commission of Sewers; there was a difference as to the numbers approving. The Commissioners did not lay down any particular rule for the numbers approving of Commissions of Sewers, but they were to receive within a certain time so many objections, but those were only merely considered; I do not know that we ever acted upon them. In the second part of the Act, as to the district drainages, there it was necessary that there should be, first of all, one-tenth applying for the power, and that two-thirds should approve of it before the Inclosure Commissioners would grant a district. The whole of the Act was under the sanction of the Inclosure Commissioners.

796. All those were for agricultural drainage works?
Yes, all for agricultural drainage works.

797. And supposing that the drainage under that Act affected the country, there is no power given under that Act of any remedy?
Not to the main river, not to the arterial drainage; it had nothing to do with the arterial drainage, making a distinction between the arterial drainage and the internal drainage of the country.

798. So that the operations under that Act might cause very considerable flood in the river, and there was no power under that Act for remedying the mischief which had been caused by its operations?
None whatever. If I may go on with the course of proceeding, I may say that I was by advertisement to hold meetings in the country, and parties attended, and I settled the list of those who were to be on the Commission, or District Drainage Board. The promoters generally supplied the Commissioners with a list of persons who were likely to be on the Commission or on the Drainage Board, and then at the meeting I generally ascertained who were the proper persons to be on, as far as I could, and properly qualified; and I made it a rule also to ascertain all their particular properties in the different districts. For instance, taking the King's Sedgmoor district of 12,000 acres in Somersetshire, there it was very difficult to get members for the whole district, and I distributed the names as much as I could all over it. The difficulties I have discovered in one or two cases where that has not been done were, that the works have been done in some particular parts of those drainage districts and not in others; so I took care that those should have interests all over the area; that the work should not be all down at one corner or in one part.

799. You are speaking now of land drainage?
Of the operation of the Land Drainage Act.

800. We

800. We do not want to go into that so much as to deal with the floods. The operation of the Act as regards land drainage is not before us?
Perhaps I may say that I have pretty well done with that subject. I have nothing more to say about it.

801. In 1873 I think you did report to the Home Office upon the subject of floods in Somersetshire?
Yes.

802. And is this, which I hold in my hand, the Report which you made upon that occasion: "Report of the Floods in Somersetshire in 1872 and 1873"?
Yes.

803. And that refers to the rivers Parret, Carey, Brue, and Axe?
Yes.

804. What, shortly, is the substance of that report; what were the floods caused by?
It was a report describing how it happened that the floods had risen since the beginning of the century, when some large works were done to free these rivers, and which were done very effectually, I believe, under Inclosure Acts; and then when these floods took place, I was deputed to go and examine into them in the different districts that you see coloured on the map there. They were caused by the great quantity of water coming down, an increased quantity for several years past, which was not able to get out at the outfalls of the Parret, and the Brue, and the Axe so fast as it came down; the consequence was that those areas were flooded. That is very much the general character of most of those flooded rivers.

805. Then, in 1876, you made a report upon the Ouse, above and below the town of Bedford?
Yes (*producing a report, and handing it in*).

806. That is a report dated the 26th May 1876, upon the floods of the River Ouse above and below Bedford; and the lowest point to which your attention was called was Tempsford?
Yes.

807. Lord *Penrhyn.*] That is where the River Ivel joins?
Yes, that was the district that the corporation, by whom I was employed, considered it only necessary to go to for their interests.

808. Earl of *Sandwich.*] You did not go up to the top of the water-shed?
No, I did not.

809. *Chairman.*] What was the substance of your report?
It was a report, first of all, describing the nature of the floods and the causes of the floods, and the way in which the different interests were affected, and also a proposition as to how those floods might be modified, or prevented in future.

810. How would you prevent them?
At present, as it states there, there are a number of mills and locks belonging to a navigation from Bedford to Lynn; I proposed that the waterways should be very much enlarged by overfall weirs, if it was not possible to do away with the mills and the navigation; but I hope to preserve those interests as far as possible, although the navigation has become almost obsolete; but still there is an interest at Bedford to keep the navigation going. It is possible to carry on a navigation, but still it is in a very bad state; it does not pay its expenses; it is of use, to a certain extent, up to, I think, St. Ives, or somewhere thereabouts; it is of some use in that neighbourhood, but above that, up to Bedford, there is little or no traffic at all.

811. Earl of *Sandwich.*] In fact you found that the railway has taken away the traffic of the navigation?
Yes, it has; and I just now stated that there was an interest in keeping the navigation as a check upon the railways for certain goods, certain traffic, that is of a cheap kind, and not requiring speed.

 812. *Chairman.*]

Mr. *R. B. Grantham.*

7th May 1877.

812. *Chairman.*] If there were no competition the rates of the railway might get up much higher, and probably would?

They might; and coming away from a seaport like Lynn, of course Bedford is very much interested in keeping that canal interest up, although it might be made available as drainage as well. Those weirs are large enough, as I state in that paper, to take off the summer water, and almost do away with the floods; but in doing that, my principle has always been in these works not to entirely drain a river as I would if the locks, and weirs, and everything were taken away, but that there should be some retention of the water, because the fall is very great in that river; from the part that I reported upon, for about 12 or 14 miles it is very considerable, and if you were to sweep away all the locks and weirs, the river would be in such a low condition that the neighbouring country, which now receives a benefit from flooding, mostly pasture lands, would be deprived of it; so that at the same time that I would keep the floods within bounds, I would irrigate the lands; and I think your Lordship will find that is part of the recommendation, as well as storing water, that there should be irrigation provided for, where one is dealing with large main rivers, so that owners of land on either side should irrigate their lands at pleasure

813. Earl of *Sandwich.*] But you are aware that there are a great number of arable fields coming down to the river near Bedford?

Yes.

814. Would you turn those into pasture?

You need not irrigate those; there is where I would say that you would have the power of irrigating pasture lands; and you may not necessarily irrigate arable land.

815. *Chairman.*] One idea that you had was doing away with the mills and locks; but that would interfere very much, would it not, with the supply of the waters?

Yes; in preference to that I would erect weirs, which would take the water off, and try and maintain those interests.

816. Then you would deprecate any system of doing away with the mills and the locks, as injurious to the amount of water that you would want in the river for purposes of irrigation?

Yes, I would take care that these weirs were put in at such levels and of such spans as to regulate the water and still supply the mills, which are, perhaps, the greatest interest on the river now.

817. And if arable land came down to the side of the river, it would not necessarily be irrigated, unless it was turned into pasture?

No; and it is possible, of course, by engineering, to turn the water in any direction one likes.

818. You speak of all these works; have you considered at all how you would carry out the works. For instance, take the Ouse, which is the river that we have been discussing, you have inspected that, you say; what would be the area of jurisdiction that you would recommend to be set up on the Ouse for the purpose of dealing with the floods that have been caused by the operation of the Drainage Act?

That applies to the general question that I have proposed in my statement here, that is, as to the recommendations for alterations in that Act.

819. I know you would propose some alterations in the Land Drainage Act of 1861; but dealing with that hardly comes within our province. What we would wish to ascertain from you is, what plan you would propose for doing away with the floods that have been caused by that Act?

I think I should constitute the limits of a jurisdiction into watersheds; I have a return here of the classification of all the rivers, which perhaps would guide your Lordships as to how far my recommendations hereafter would be carried out (*handing the Returns in question to the Chairman*).

820. I understand your plan of dealing with the floods would be to divide the country into watersheds?

Yes.

821. And

821. And you would divide the rivers into certain classes?
Yes.

822. You would have first class rivers having catchment basins of a thousand square miles and upwards?
Yes.

823. And you would have second class rivers having catchment basins of from 500 to 1,000 square miles?
Yes.

824. And third class rivers having catchment basins of from 100 to 500 square miles?
Yes.

825. And fourth class rivers with catchment basin of from 50 to 100 square miles?
Yes.

826. And the fifth class with catchment basins of 10 to 50 square miles?
Yes.

827. In the first class rivers you would include the Thames, the Witham, the Ouse, and the Humber?
Yes.

828. Each of those would have a district to itself?
Yes.

829. And in the second class you would have the Medway, the Ribble, the Tees, and the Test?
Yes.

830. And so on with the other rivers?
Yes.

831. So that then you would have five different classes, which would include, according to your calculation, 210 different rivers?
Yes.

832. Each of those catchment basins would be formed into a district?
Yes; I should say that the object of that table was to enable your Lordships to suggest any mode of legislating upon the watershed principle. Some of them are not, of course, very large.

833. I will take the Ouse; you would propose to put that river in the class of those having a catchment basin of a thousand square miles and upwards; its length is 156¼ miles; the area of the basin is 2,894 square miles; there are eight tributaries to the Ouse, and the united length of those eight tributaries would be 212 miles?
Yes.

834. And you would put all those under one District Board?
Yes.

835. Forming it into one district?
Yes.

836. The Ouse river you put in your table, I see, as belonging to the county of Cambridge?
There are two or three Ouses in England.

837. But the one we are talking of is the Ouse at Bedford; do you mean the Ouse that runs by Bedford?
Yes, some of those watersheds are very long, and go in to a great many counties.

838. Then having formed these watersheds into a district, what would be your next process?
I would then divide them up into Boards, subject to the general body of Commissioners.

 839. You

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839. You first of all say that the particular watershed should be formed into one district?
Yes.

840. Then we have not got any Commissioners yet; I want to know what your next process is?
That they should be formed under a body of Commissioners; the watershed should be managed by that body of Commissioners.

841. Then who would appoint these Commissioners?
Really I do not know how that would be done in very large cases. I might mention as an instance of my proposal, very much the same system as the Thames Valley Drainage Act. There is a body of Commissioners who are named in the Thames Valley Drainage Act; they have a controlling power over a certain district, limited (by what, I believe, was my recommendation) to a level five feet above the floods. Then they divided out the whole area into a number of drainage districts. I have the maps here which describe the system, because it is an instance of what I believe might be done with water-sheds.

842. Before we see those maps, let me ask this; I understand you that those Commissioners are appointed under the Act?
Yes.

843. Then we must have some system, if we are to divide the country into watersheds, of appointing Commissioners, because that would be the first thing necessary?
Yes.

844. But you have no plan for that, you say, in the large districts?
No; I do not understand well enough how that would be done.

845. Lord *Penrhyn.*] You said that the area would consist of land within five feet above the floods?
I was describing partly the system that was adopted in the Thames Valley Drainage Act.

846. How do you reckon the levels of the floods; the floods are not always the same height?
Those plans were taken and contour lines were surveyed and drawn by the Ordnance, and they ascertained the highest flood in 1873.

847. They were lines drawn upon the map?
Yes.

848. I only wanted to know how you would define five feet above the floods, because that would be very indefinite?
Yes, it would; that would not be sufficient for a watershed; of course, the water shed would take the high ground and low ground, and altogether.

849. *Chairman.*] Will you show the Committee your maps now?
(*The Witness produces the maps, and explains them*). I should say that I was inspector under the Inclosure Commissioners for the Thames Valley Drainage Act. I took the highest floods that we could get at, and they are all marked on the bridges across the Thames. That red colour on the map is the area which was the basis of the whole of the jurisdiction of the Commissioners. These other lines (*pointing to them*) are watersheds. These blue colours show lands that I have added from my inspection. The height of the 5-feet level above high floods is taken on the principle of discharging pipe drainage and agricultural ditches above high floods.

850. I do not quite understand how it is that you fix the highest flood; is it any particular day, or any particular year?
More particularly the highest flood of any particular year; for instance, 1873 was a very high flood, and that flood took place while these surveys were going on.

851. Earl of *Sandwich.*] What month was it in; was it in July?
It was in February, or the early part of 1873; in the same year that that report

report on the Somersetshire drainage was made, which has already been referred to.

852. Lord *Penrhyn.*] At what point of the river would you put your standard level for the highest flood; because the highest flood up above, say at Windsor, or Eton, would be different from the highest flood in this part of the river, would it not?

Yes, it would; it would spread over the land, and rise and fall to the flood level. We will suppose there is a flood at Windsor, and a flood here, and no tide here; in a non-tidal river such as that part of the Thames, or in the Ouse, there is a fall in the floods, and we fix these by observation.

853. I say, which point in the river would you fix to be the standard level for the highest floods, five feet above which you would bring into the area of taxation for these works?

We did not fix any one particular place, because there was a falling gradient, as it were, of the surface of the flood water.

854. But you define a certain area to be liable to taxation for the works necessary to be carried out, and you fix that area by a line five feet above the highest flood; I do not understand where you fix your level for the highest floods, whether at Eton, or down about here?

It is not fixed at any one point, but at the different points along the line of a river.

855. Then what distance would you include at that point of land to be brought into that area of taxation?

All that came within a contour line, drawn as shown by that red colour; that red colour represents a five-foot level above the flood.

856. *Chairman.*] You would have a District Board for the whole of the watershed?

Yes.

857. And you would have that District Board divide itself, divide the watersheds into small districts?

Yes.

858. And then how would you constitute each district; how much of the river would be formed into a district?

The districts should have nothing to do with the river; the main body (I call them Commissioners) of the watershed, should have the whole control over the arterial drainage of the main river, and distribute the cost of it, of course, over the whole watershed, if need be. Then the several districts (we will suppose each tributary should be formed into a drainage district) would manage their own affairs, and tax themselves.

859. Outside the great Board?

Outside the great Board; but I should describe what I thought was rather a good feature in the Thames Valley drainage, that some of the Commissioners are associated with these District Boards; some few, such as those whose interest may be in the neighbourhood of that district. I had the forming of those Boards, and I put on a certain number of Commissioners to each District Board, so that the Commissioners have full control and knowledge of what is going on in the minor divisions or the sub-divisions, and can, of course, know what is necessary for the arterial works which the Board of Commissioners have only to do with; but they can tax the whole district for the cost of the improvement by the arterial works.

860. Then if I understand you that one large Board and the watershed is to be divided into smaller districts, each district to carry out the works which that district may think right for itself, and the large Board is to have the taxing power; or would you give each small district taxing power?

Each small district should tax itself for its own particular works; the large Board should tax the whole watershed for all arterial works, that is, for the improvement of main rivers, and if need be, the tributaries.

861. When you say the improvement of main rivers and tributaries, what do you mean?

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Improving and forming them, and training them, and making them not liable to floods.

862. Do you consider that the neglect of maintaining rivers in a proper state has been partly the cause of the increased floods of late?
Yes, I have no doubt of it.

863. How would you have these lesser areas formed; would you have them formed by anything like a Provisional Order?
Yes, I would. The main watershed, I think, should be carried out under an Act of Parliament.

864. And the Commissioners set out in the Act like what is done in the Thames Valley Drainage Act?
Yes, I think it is a very good model, so far as it goes, for those purposes.

865. In point of fact, your idea of providing for the drainage of the country, and for preventing floods, would be to go upon the lines very much of the Thames Valley Drainage Act?
Very much.

866. In the Act setting out the district which would be formed of the watershed you would name the Commissioners of the great District Board?
Yes, I would.

867. And then you would leave it to them to divide the watershed into districts?
Yes.

868. And that those districts should be appointed under Provisional Orders?
Yes.

869. Confirmed as Provisional Orders are by Parliament?
Yes. It was not necessary in the Thames Valley Drainage Act to get a Provisional Order for those sub-districts; it was sufficient that the Inclosure Commissioners made an Order constituting these districts.

870. But, then, how would you provide for the towns and populous places that would be brought within these sub-districts?
I would leave them to be carried out under the Act of 1875, the Public Health Act, within their own limits, and that the watersheds should then deal with all the land outside of their limits.

871. Then you would constitute the Local Board within a borough or town under the Act of 1875, and give them all the powers which the District Boards would have?
They would be under the Public Health Act of 1875.

872. What powers does the Public Health Act of 1875 give to the Local Boards in the towns?
It gives them the power to carry out drainages, water supply, and, if need be, gas; and to repair the roads, and very many things; municipal matters under the Local Government Board.

873. Then, does it give them power to deal with the rivers?
No, it does not.

874. Therefore, if it was necessary to give them any power over the river that went through their jurisdiction, you would have to give a Parliamentary sanction to that?
Yes.

875. They have no such power at present?
No.

876. Lord *Penrhyn.*] They have power under that Act to take water for the purposes of health?
Yes.

877. They can interfere with the river for the purpose of storage, for the supply of water to that district?

Yes,

Yes, they can. I do not know that they can divert the river. In addition to that, I should provide that this Watershed Commission, or whatever it may be called, should have the power of storing water for villages and small towns, and large towns, if need be, being paid for the water.

878. Lord *Somerton.*] And storing for agricultural purposes also?
Yes, for agricultural purposes also, certainly. And I would also provide that irrigation should be a part of the system of the Watershed Commission; also subject to be paid for.

879. Earl *Stanhope.*] Would you annex any condition as to the erection of mills; at present private proprietors can erect mills without any condition, can they not?
I do not know that they can if they interfere with the level of the river, or with the form of it?

880. But they are not obliged to make weirs?
A mill could not very well be constructed, or be very effective, if you did not construct weirs to raise the water so as to get a fall for the mills. Of course, you can put steam mills anywhere, and take the water out of the river; but the water for water mills must necessarily be raised so as to get a fall; and that is, of course, a difficulty.

881. Duke of *Northumberland.*] Supposing a town to be exposed to floods; under the Public Health Act there is no means provided by which a town can save itself by embankments or river works?
No, I believe not.

882. And supposing such embankments and river works necessary, who is to erect them; would it be the Drainage Commission?
Yes, the Drainage Commission.

883. At whose expense would that be?
It would be at the expense of those who benefited by it.

884. At the expense of the town?
Not at the expense of the town altogether, because the town would be rather separate. I want to separate all that question of towns and rivers from the watersheds.

885. Can you separate that question if a town is likely to be flooded?
Yes, I have no doubt I can.

886. I should be glad to hear how?
To prevent the water rising above a certain level by training the river in a proper manner.

887. Then you would allow the town power to interfere with the river, would you?
No, I would not. I would not allow anyone to interfere with the Watershed Commissioners in their dealing with the arterial drainage at all of rivers.

888. Then it follows that the Commissioners must have the power of charging the town for any improvements in that river which are necessary to save it from floods?
It might be so. The great difficulty of taxing a town is this, that the value of land in a town is very different from that of agricultural land; there may be a certain power given to the Watershed Commissioners to charge the town according to a certain scale; but there is a great difficulty considering the great difference in value between the agricultural land and the town land; and if the river were properly trained and properly formed, I do not see that there would be any danger of floods at all, taking Bedford as an instance.

889. Supposing the case that I put, would you allow the towns to be represented on the governing Board, whatever it may be?
Yes, I think it would be right that they should; the mayor and some members of the corporation, or as the Universities are in the Thames Valley Drainage Act, there the principals of the colleges, the bursars, and so on, are members of the Board.

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890. Then we arrive at the point that the towns on the river bank which are liable to injury from the river are to be represented and are to be taxed?
Yes; there must be some regulation of that kind, I am aware.

891. Earl of *Sandwich.*] I should like to ask you this question; it is only within the last few years that we have heard of floods, at least of these excessive floods?
Yes.

892. That is about the time that the railroads began to interfere with the navigation?
Yes, we have certainly within that number of years had an increase of floods.

893. And the navigation did not do their duty properly by the river by cleansing any part of it, or doing any work; it is a loosing concern, and they did not think it worth while to dredge or keep the rivers in their proper state?
I believe not.

894. And the same occurred with mills also; there was no power to overlook the mills, and anybody repairing his mill or putting a new sill down would not go to the bottom of the river, but put it as he chose, so that he might raise the water a foot or two without being observed?
That has been done; persons have taken down their weirs to repair them and put them at a higher level than before; but possibly the person would not own land on both sides of the river, but the owner may have the land above the mill.

895. So that it would be nobody's business in fact?
Nobody's business. The other side of the river would be damaged of course, and it would be difficult for an owner on the other side to complain; at the same time it is possible to get it within limits, to make the miller take off the height of the river.

896. Above the mill there was also a spill-water that carried off the surplus water round into the river?
Yes.

897. That has been neglected also by the navigation?
Yes.

898. That has all grown up, and is of no use?
Very little.

899. Do not you think that if the river had been properly cleansed, and if the osier holts were cleansed away and the spill-water grounds were also cleansed out, we should hear very little of the floods?
I think that there are a great many other things that have caused the irregularities in the rivers; the silting up of the bottom, and the breaking in of the sides.

900. That is part of the business of the navigation to repair that?
Yes.

901. Only they do not do it now?
No.

902. And they ought to have been forced to do it?
Yes, but you can hardly expect them to do it where there is no traffic.

903. Where they receive a toll they are bound to do it?
Certainly, if they have an adequate toll; but I believe in the Ouse case they do not pay their expenses.

904. Whose fault is that?
It is very difficult to compel them to do anything for the works; they say it is sufficient for the traffic which they have got.

905. Do you not think we have machinery now to work off the floods without going to any great expense?

It would be necessary to a little clear the river, even if we were to put in weirs for taking the floods off.

906. If the mills were watched, would not that have a great effect; a great cause of floods now is the mills being antagonistic to each other, and when a flood of water comes down they keep up the head of water very often to destroy their neighbour's use of it?
Yes.

907. If that was under proper regulation, and the bottom properly cleansed, and the spill-water properly cleansed down, would not those things together in a great measure prevent the present floods?
It might, but I do not think it would stop them. The spill-water is a local term in Cambridge or Bedford; but with regard to these large weirs, at present the Ouse, taking that as an instance of the spill-water, has only little weirs of 20 feet and 22 feet wide to take off the surplus water that the mill does not take; these little weirs are of no use whatever for reducing floods, and I do not think that if a river was properly trained and proper weirs put in, the mill interest need be damaged at all; I think it would be rather improved than otherwise.

908. I should like to ask you now with respect to the navigation; the navigation is cut up by the railroads?
Yes.

909. Would it be possible to have steam upon the rivers to carry the barges up by steam?
Yes, it would; but I do not know as to the paying; in many of the rivers perhaps it would not pay, or else I should think they would have found it out before now; and not only that, the locks of many rivers are not sufficiently wide for steamboats.

910. They would have a boat, of course, of a particular size; but if the river was properly cleansed out and kept at a proper depth, it would carry a small barge?
Yes.

911. And by the use of steam time would be saved; the length of time that the barges are on the river between Bedford and Lynn constitute the great difficulty of the navigation?
Yes; of course water carriage is always a slower process, but certain things would be carried on the barges that do not require to be carried quickly, and would only involve a small cost of transit.

912. *Chairman.*] But whatever mode might be adopted of cleaning the river and doing away with the floods, you would require some body of Commissioners to do it
Yes.

913. It must be somebody's duty according to your plan?
Yes.

914. And it would cost a certain amount of money?
Yes.

915. And, as I understand you to say, you would have two rates, one rate for the larger expenditure of improving the outfall and all the arterial works, and a special rate for the smaller, the internal works, which would be carried on by the sub-districts?
Yes, I would.

916. Then how would you rate the property; would you include it in the poor rate, or would you have a special water rate?
The poor rate is totally inapplicable. I found that to be the case in the working of the Land Drainage Act,

917. But with whom would you leave the power of deciding what the rate would be?
It must be done by the Commissioners, and subject to appeal.

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918. Have you thought to whom you would give the appeal?
No, I have not. In the case of the Land Drainage Act I have been the arbitrator.

919. But that is under the Land Drainage Act?
Yes; because I look upon that as a special kind of rating according to the benefit conferred, from the 4th and 5th of Victoria, cap. 45; that Act sets it out a little, but the mode of rating is very imperfect.

920. Was the arbitration upon rating put before you in accordance with the provisions of the Act of Parliament?
Yes, it was generally an appeal to the Quarter Sessions, and then it was submitted to me; there is a power under the Land Drainage Act to submit it to an arbitrator.

921. That is to say, that where there is an appeal made to the Court of Quarter Sessions, then that appeal is carried further to an arbitrator appointed by the Inclosure Commissioners; is that so?
Yes, in some cases it was; in some cases it was done by the parties themselves, both the appellants and the others.

922. That is to say, the parties agreeing?
Yes, agreeing that I should take it.

923. Lord *Penrhyn.*] What would be the basis of your valuation; would it be the county rate or the poor rate. You say according to your proposition the money is to be levied in proportion to the benefit derived by the land from the works that are to be executed; still you must put a valuation upon the land; what is the basis of that valuation; is it to be the county rate or the poor rate?
Neither.

924. Are you to have a fresh re-valuation of all the lands included in these areas?
I have mentioned already that the rate should be of two kinds; one for the arterial works, which I should call for the present a landlord's tax; that should be a general tax, obtained for that purpose, and for the general management; then for the minor districts, first of all, I should do as they did in Ireland, value the lands before the works are commenced, and again after they have been completed.

925. Then you would have a re-valuation of all the lands included in all these areas by somebody or other?
Yes.

926. And who is to make that re-valuation of all the properties within these areas?
It would be done, of course, under the directions of either body, either the watershed body, or the sub-division body, the district body.

927. I am not speaking of the tax, but the re-valuation of all these areas by the Commissioners of this Watershed Board?
The Watershed Board would levy an equal tax on the whole.

928. I am not talking of the tax, but of the basis of the valuation?
There would be no valuation in the case of the arterial drainage, but there would be in the case of the sub-districts or the drainage districts; that should be in proportion to the benefit conferred.

929. Suppose you say of an individual owner that his land has been benefited by one-third, what is to be the basis of the valuation of the original value of his land; who is to settle it?
That must be settled by the body managing.

930. In fact it would be a re-valuation of all the lands within the area of taxation?
Yes. I would not take the poor law as the basis of a valuation of land improvement; it is the greatest mistake possible.

931. Or

931. Or the county valuation?
No, not at all. I would take it specially as the law lays it down, according to the benefit conferred.

932. Lord *Stewart of Garlies.*] As to storage of water, I think I understood you that it would be very important to keep the weirs and locks at present in order to ensure irrigation?
Yes.

933. Have you any plan to propose by which, in future time, you could keep the water?
Yes, of course there would be a machinery to do it by sluices and so forth, to keep the water up, and supply what may be called reservoirs.

934. But would you form reservoirs?
Yes, it would be necessary to do that.

935. And you think it would be advisable?
Quite so; it is very much wanted at this present moment.

936. That is to ensure irrigation of the meadows?
Yes, it might be done for that

937. Would that be your object, I mean?
No, I would not have an expensive thing like a reservoir for irrigating land, because I could get it off the level of the weir without necessarily storing the water in a reservoir; it would be used for municipal and social purposes.

938. Earl *Cowper.*] I think you said that in the first instance the Commissioners of the Watershed District were to be named by Act of Parliament?
Yes.

939. How would you fill up vacancies that might arise?
I do not exactly remember how it is done under the Thames Valley Drainage Act, but that precedent might be followed.

940. You do not mean the Thames Conservancy Act?
No, the Thames Conservancy is quite a distinct Act.

941. The principle adopted in the Thames Drainage Act has been successful, has it?
It has not been tried for works at present. The body appointed the Ordnance Department to make the survey, and they were very long about it; they were three or four years before we got the plans, and they have only now been able to form the sub-districts, but they have not settled on any works yet. So far they are tolerably successful, but the main success depends upon whether the works are such as will do all that they expect.

942. As far as you at present recollect that Act, there is no principle of election of the Commissioners?
There is a mode of filling up a vacancy, which I do not remember now. There is an Act now passing, an Act that perhaps may be a matter of some interest to the Committee; it has passed your Lordships' House, and is in the House of Commons, the Somersetshire Drainage Act (*handing in the same*).

943. Did I understand you that the principal Commission is to have complete power over the smaller Commissions?
Yes; it should be combined, I think.

944. Power to override the smaller ones?
Not to override, because I think the sub-divisions ought to be left as independent as possible.

945. And if they clash, the larger body is to control them?
To settle any differences. I think the Act provides that in case of difference, the question is to be submitted to the Inclosure Commissioners, who would provide a remedy.

946. You would entirely follow the Thames Valley Act, would you?
A good deal.

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947. Earl *Stanhope.*] Is that Somersetshire Drainage Bill consequent on your report upon the Parret in 1873?
Yes.

948. And in plain words, what are the recommendations in that Bill?
To do very much as the Thames Valley Drainage Act; it is founded upon that almost page for page.

949. Are they to make weirs?
They do not prescribe any engineering; the administrative part of it of course is well defined, but they do not limit the engineering.

950. In fact it is on the lines of the Thames Valley Drainage Act?
Yes, very much so.

951. Lord *Somerton.*] You told us that the Somersetshire floods, in your opinion, were caused by a great increase in the flow of water that came down from the upper lands?
Yes.

952. Have you ever formed any opinion as to what caused that increase; was it increased rainfall, or agricultural drainage, or what was it?
It was improved agricultural drainage.

953. That you are convinced of?
Yes, I am sure of it. In my report I think there is the rainfall 18 years back given, to compare with the rainfall that happened at the time that I was there.

954. And was there any increase?
It was very much increased at the time I was there.

955. You are of opinion that, in spite of the increased rainfall, the agricultural drainage had also a good deal to do with the increased flow of water that came down?
Yes, it had; and it was owing to a number of years neglect of outfalls which, as I said just now, were very fairly adequate in the beginning of the century, somewhere about 1809; as will be seen in that report, they had been neglected, and also had to receive an additional quantity of water.

956. Then you are not of the opinion of one witness whom we had before us, who said that in small rivers it was not necessary to take any heed of the outfall, that it would take care of itself?
I am afraid that would not be a general case. I should say that the agricultural drainage is acted upon in two ways; it is the pipe drainage and the improvements of agricultural ditches and clearing the river, and everybody trying to get rid of the water as fast as they could into the valleys.

957. Clearing the watercourses?
Clearing the watercourses, and I have no doubt in many cases they have cleared the smaller rivers, streams, and so forth.

958. *Chairman.*] You have given us a general notion of how you would deal with a large district, dividing it into watersheds, and appointing Commissioners, and dividing it into smaller districts, and I think you have based your recommendations chiefly upon the provisions of the Thames Valley Drainage Act?
Yes.

959. Could you tell us in what year that was passed?
In 1871.

960. And have you had any experience of the working of that Act?
After it was passed, the Ordnance Department made the surveys, very elaborate surveys, and when that was done, I went over it and fixed the boundaries, the jurisdictions of not only the large area under the Commissioners, but also divided up the minor districts, eight of them. Then the Inclosure Commissioners made an Order, founded upon this report, and then it was handed over to them; in fact that Order gave power to the Commissioners and to the District Drainage Boards to act. The first thing they did was to pay off

off the cost of the survey, and getting the Act, and all those preliminary matters. Now I am out of it entirely; I have nothing further to do with it, except that I should be called upon by the Inclosure Commissioners, who have the power to appoint a deputy, and it is possible I shall be.

961. We have not much experience then, in point of fact, of the working of the Act of 1871?
No, not as to works, none at all.

962. As I understand you, all that we know of the Thames Valley Drainage Act, which was passed in 1871, is, that after the Ordnance survey had been made of the whole district, when the county was divided by you into smaller districts, and Commissioners had been appointed to carry out the provisions of the Act, and the preliminary expenses that were incurred have been paid?
Yes.

963. And that is as far as you know of your own knowledge?
Yes.

964. Then, out of what funds were those preliminary expenses paid?
According to the Act, that was a first charge upon that pink area that you see on those maps; an acreage rate, not a valuation.

965. Lord *Penrhyn*.] A rate based upon acreage and not upon value?
Yes.

966. *Chairman*.] And that acreage was devised by you, was it?
Yes, so far as the proposing that red colour goes.

967. What I understand then is, that there were certain expenses that have been incurred since the passing of the Act, in the early stage, in carrying it out?
Yes.

968. And taking the whole of that district, there is a portion of that district coloured pink which was coloured pink by you?
I did not colour it because it was surveyed in by the Ordnance by a contour line, and they coloured it.

969. But who determined the 5-foot line?
The 5-foot level above the floods.

970. Was that a contour line which was made by the Ordnance at your instigation, or did you take that contour line because you found it on the map, and thought it was fair?
No; the principle was the vertical level of five feet above the highest floods. That line was surveyed in by the shores along the banks of the River Thames, and within those lines the acreage for the first expenses was taxed.

971. Before we get to that, you stated that you took five feet above the highest flood; how did you obtain that five feet; was it by taking the highest flood upon some particular day in 1873?
That was the flood just while they were surveying.

972. They were not surveying the whole river from its source to its mouth at one and the same time?
No.

973. Then how did you get the highest flood; was it a guess that you made?
No, it was a well-defined flood, and the highest that had been known in the country.

974. And the flood was going on for one, or two, or three, or four days?
Yes, it was; at any rate the Ordnance people made a mark on the bridges, and they ascertained what it was.

975. So that in point of fact the tidal flood was marked by them on the bridges, and then that enabled them to take that five-foot level by means of a contour line on the map?
Yes.

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976. And then within that district so marked by contour lines, and which was coloured pink within that acreage, whoever were owners of land within that portion of the map coloured pink, were liable for the expenses that had been then incurred?
Yes.

977. And how was that rate arrived at per acre?
There was a sum of money, and that was divided by the number of acres.

978. The sum of money that the whole of the proceedings had cost up to a particular date was divided by the number of acres that were represented on that part of the map coloured pink?
Yes; there were some exceptions to that under former inclosures; but that is immaterial.

979. But as a general rule, that is the way in which the sum per acre was obtained?
Yes.

980. And so far that is as far as we can get any experience of what the working of the Act of 1871 is?
That is all you have.

981. So that it is merely the preliminary expenses?
Yes.

982. Lord *Penrhyn.*] That taxation was based entirely upon acreage; whether the land was good land or bad land, it was based on acreage, irrespective totally of its value?
Yes, I think I am perhaps speaking of the Act which is out of my province, because I believe you will have Mr. Hawkins, the clerk of that Act, here; I mean that there are questions that I may not be able to answer.

983. *Chairman.*] I did not propose to put any more questions to you on that Thames Valley Act. I know from a Paper that I have before me that you have inspected the boundaries of this Act, and I wanted to know how far that Act had been in operation?
So far as works have gone, there have been none at all.

984. Earl *Cowper.*] Just one question about the taxation of this land that is marked red; did I rightly understand that it all paid the same?
It all paid the same.

985. Even that land actually below the level of the flood, paid no more than land 4 feet higher?
No, that is for the preliminary expenses; it was not according to benefit conferred.

986. Lord *Meldrum.*] What was the cost per acre, do you know?
Two shillings and ten pence.

987. Lord *Stewart of Garlies.*] By the Thames Valley Drainage Act is there power to make reservoirs?
No, there is not.

988. Lord *Penrhyn.*] You know nothing more about the working of the Thames Drainage Act, and how it has been going on?
No, I do not. I think you will have the clerk before you who will answer the legal questions and all others relating to that Act.

The Witness is directed to withdraw.

Mr. ANDREW PERCIVAL, called in; and Examined, as follows:

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989. *Chairman.*] You are a Solicitor?
Yes.

990. And have lived at Peterborough between 40 and 50 years?
Yes.

991. And you have been in active practice as a solicitor there for a considerable time?
Yes.

992. And have you in the course of that practice had opportunities of becoming well acquainted with the history of Parliamentary and other proceedings relating to the River Nene?
I have.

993. You have been connected, professionally, I believe, with it?
Largely.

994. The River Nene falls into the Ouse, I believe?
No, it connects with the Ouse by a branch from Peterborough, but the main river is from Peterborough to Wisbeach, and thence into the Wash below Wisbeach.

995. I suppose from your long residence at Peterborough, you are aware of the condition of the river in the neighbourhood of Peterborough above and below?
Yes.

996. For any considerable distance?
I think from Northampton to the sea, I know it. I am a native of Northampton, and have known the river all my life.

997. What has been the condition of the river?
The river was put under Parliamentary control in the year 1852; I think it would be well if I shortly state the course of the river from Northampton downwards. Before 1852 the river from Northampton downwards was under several Acts of Parliament, dating back to the reign of Queen Anne. The first of those Acts, the Act of Queen Anne, provided for making the river navigable from Peterborough to Northampton; it formed a body of Commissioners, and authorised them to grant navigation tolls, but it provided that no part should be done until they had formed contracts for making the whole. The consequence was that nothing was done until, I think, the reign of George the Second. Then a further Act of Parliament passed authorising them to grant a subsidy on the tolls between Peterborough and Oundle, about 13 miles towards Northampton. Another range was made from Oundle to Thrapston, and then in a later period of the reign of George the Second, a further Act of Parliament authorised a grant between Thrapston and Northampton. Above that place the river has not been navigable. The navigation was supported by tolls; incidental works which affected the drainage were authorised to be ordered by the Commissioners of the navigation; but those Acts were substantially Navigation Acts, and in them there was no power to tax the lands, and the Nene Valley was free from taxation as far as the lands were concerned down to the year 1852. The high land of the river ceases at Peterborough, and there practically the river enters the fens, enters the district of the Bedford Level Corporation. Just below Peterborough the river divides into two branches; one of them is the old River Nene, which runs through part of the Isle of Ely and joins the Ouse by a branch from a place called Stanground Sluice; the main river runs to Wisbeach partly through an artificial channel or canal, called Smith's Leam, and joins the natural channel of the river below. Below Peterborough the river bed is higher than the bulk of the adjoining lands, and the lands are protected on the north side of the river by what is called the North Bank. Smith's Leam or Morton's Leam, on the south side, by another bank, which protects the fen country, called the

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South Bank. Between these two banks, for a distance of about 11 miles below Peterborough, is an area of low lying meadow land, called the Wash; that contains from 3,000 to 4,000 acres, and over that land, in times of flood, practically the river waters spread themselves. The name Wash denotes what it is.

998. Lord *Stewart of Garlies.*] What is the width of that low land?

I think I may safely say that the Wash is half a mile across; and then again, when the Washes cease, the banks come together again, and they are close upon the river bank, and from that point, through the town of Wisbeach, the river is banked till it enters the Wash. The maintenance of the bank on the north side of the river below the town of Wisbeach is vested in a body called the Commissioners of the North Level of the Fens; on the south side it is partly in the Middle Level Commissioners, and lower down in three or four different bodies of Commissioners. The jurisdictions become very intricate, and depend on a variety of Acts of Parliament; a bank here is maintained by one body, and a bank there by another; but the river becomes complicated below Peterborough by its becoming, as it is described in one of the very numerous engineering reports, a channel for the distribution rather than the reception of water. Below Peterborough, down to the sea, a straight distance of 30 miles, there is no affluent whatever; no brook or watercourse in any part of its course enters it, but all the way down the water is drawn from it for the supply of the fen lands on each side. That is a right of the greatest importance, and is most jealously watched by the districts on each side of the river. Through Standground Sluice the Middle Level Commissioners have the right of drawing water from the Nene. About four miles below Peterborough, on the north side, the Duke of Bedford and the North Level Commissioners draw the water. The sill of Standground Sluice and the sill of the North Level Sluice, called the "Dog in a Doublet" sluice (taking its name from a public-house with the sign of a dog in a jacket) are upon the same level, and each interest is particularly careful in watching the freshwater rights. Lower down on the south side other districts draw water from the river, but in a minor degree. I might say that before 1852, between Peterborough and Wisbeach, the channel of the river was under no conservancy whatever. Locally, it was within the limits of the Bedford Level Corporation, but inasmuch as the lands on each side were protected from flood by these large barrier banks, and it was rather to the interest of the lands on each side that the water should be high in the river, that they might draw unlimited quantities of fresh water into the fen country, they had no inducement to scour or cleanse the channel of the river; and by degrees it became silted up and practically in dry times the navigation ceased. The Conservancy between Northampton and Peterborough was extremely ineffective, because all that was done in the river had to be paid for by the navigation proprietors, who were private individuals, whose object was to make as much as they could of their tolls and do as little; to earn as much and spend as little as they could. The consequence was that the channel of the river was in very bad order, and there were very great complaints from Northampton seaward as to the state of the river. The seaward outfall of the river was vested in another body called the Nene Outfall Commissioners, who acted and still act under an Act of Parliament passed in the year 1827. They made the outfall seaward nearly up to the town of Wisbeach, three or four miles below the town of Wisbeach, to a place called the County Boundary, the division between the counties of Norfolk and Cambridge; that is the limit of their jurisdiction. Through Wisbeach, the Wisbeach corporation exercise some authority and maintain the banks. The jurisdictions were legion, very numerous. In 1852, by general concurrence of the various interests in the river, meetings were held (I recollect some); all the large proprietors met at Peterborough, the Duke of Bedford, Lord Overstone, Lord Northampton, Earl Fitzwilliam, the Marquis of Huntly, and other large proprietors and persons in the town of Wisbeach and other towns interested in the stream; and an Act was passed in the year 1852 which incorporated a body of Commissioners having authority from the town of Northampton as far as the county boundary below Wisbeach; the jurisdiction of the Nene Outfall Commissioners, who had the seaward outfall, not being in any way interfered with. By that Act, a body of Commissioners was appointed, having jurisdiction over the whole stream from end to end. It was formed into three

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three districts for drainage purposes, and two districts for navigation purposes. The attempt was made to combine in one Act the interests of the navigation and of the drainage. The engineer was Mr. Rendel. Two funds were provided, one for the improvement of the outfall beginning at the county boundary below Wisbeach where the jurisdiction of the Nene Outfall Commissioners ceased, and extending upwards as far as Peterborough. For those works the whole of the interests that were affected were either directly taxed, or contributed by agreement, the contributions being defined in the Act of Parliament itself. The valley lands, the meadow lands I may call them, from Northampton as far as Peterborough, certain of the meadow lands below Peterborough, and the Wash lands below Peterborough, over which the floods extended, were rated. As far as Peterborough, the meadows generally, and for a small distance below, certain selected meadows paid a tax, called the Outfall Tax, 1 *s.* per acre, capitalised at 25 years' purchase, 1*l.* 5*s.* per acre, which they had power to pay, and did pay, in three instalments, or at once, as they pleased. I must be allowed here to refer to the Act of Parliament. The Outfall Tax was "a single tax or assessment of 25 times the amount of an assessment equal to an average of 1 *s.* an acre on the meadows and lands in the first and second districts, and the flooded lands in Standground in the third district, and to be paid by the owners or occupiers of those meadow lands, and flooded lands. Secondly, a tax of 8 *s.* an acre on the Wash lands in the third district, containing altogether 3,450 acres" (that is the tract of the Wash that I have described between the two banks below Peterborough). "Thirdly, 40,000 *l.* to be paid by the mayor, aldermen, and burgesses of the borough of Wisbeach" (in this Act called the Wisbeach Corporation), "in three equal instalments, together with a duty of one halfpenny per ton upon all goods imported into the town of Wisbeach as in such Act mentioned. Fourthly, 2,000 *l.* gratuitously agreed to be paid by the Most Noble Francis Duke of Bedford" (he is the owner of a very large estate in the North Level); "Fifthly, 2,500 *l.* to be raised by the North Level Commissioners;" then 1,500 *l.* to be paid by the Bedford Level Corporation, Conservators of the Great Level of the fens; 5,500 *l.* to be raised by the Waldersey Drainage Commissioners (that is a district on the south side of the river below the Wash and between the end of the Wash and the town of Wisbeach, having rights of drawing fresh water from the river, and discharging their drainage into it); then "two taxes or assessments, the one a terminable yearly equal tax of 6 *d.* an acre, and the other a perpetual yearly equal tax of 2 *s.* an acre, to begin when the terminable tax ends, on 1,779 acres of land, or thereabouts, in the Wisbeach south side, and Elm west side district" (that is another district like the last, nearer Wisbeach); then "1,000 *l.* from the Peterborough Improvement Commissioners." Those funds were, with the exception of the money ordered to be contributed by the Bedford Level Corporation, wholly raised for the purposes of the improvement of the outfall between the county boundary and the city of Peterborough. The Act of Parliament provided that the work should begin at the county boundary, that is, begin at the lowest end, and be worked continuously upward towards Peterborough. Then, for the purposes of the district between Peterborough and Northampton, the Commissioners were empowered to levy an equal acreage rate of 5 *s.* per acre, but the Act of Parliament contained a provision for apportioning the outfall tax of 1 *s.* on the average, and the 5 *s.* on the average, upon a scale graduated according to the benefits which the lands were expected to receive. Valuers were appointed; they were to form a schedule of the lands, and of the rates and taxes which they proposed to impose upon them; they were directed to advertise it in one newspaper circulating in Northamptonshire, and one newspaper circulating in Cambridgeshire; appeals might be made to the body of Commissioners, after which that apportionment was final; that apportionment was made, and in the result some of the lands which were charged nominally on the average 1 *s.* or 5 *s.* were made to pay very much more; I think there are some near Peterborough rated as high as 17 *s.*, the tax varying from next to nothing up to (I am not aware of any higher than) 16 *s.* or 17 *s.* There are some small pieces near Peterborough that paid as much as 16 *s.* or 17 *s.* per acre.

999. *Chairman.*] How could they get it at the 16 *s.* per acre?

Two valuers were named by the Act of Parliament, and they had the plan

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of the works proposed to be carried out, and they were directed to examine the state of the land at the time, and on the assumption that the works could be carried out, they would determine what benefit the land would receive being converted from wet land to dry land, for example; and they would say what in proportion they ought to pay as contrasted with other taxable lands which were higher and better at the time the Act of 1852 passed.

1000. I understood you that there were two maximums, one of 1 *s.* and the other of 5 *s.*?

That was the maximum average tax; every acre was to pay 1 *s.* or 5 *s.*; that was over the whole 15,000 acres; but when the surveyors went over it, they said (for example) "this acre is five times worse than that for its drainage capabilities; it shall pay five times as much." The result has proved to be this, that inasmuch as the scheme in a great measure failed for want of finance, the low lands which have derived the least benefit have paid and are paying the most tax. It sounds extremely equitable to tax the lands according to the benefit to be derived; but inasmuch as any such graduation must be based upon an estimate, and assumes as the basis of the estimate that the works are carried out in their integrity, when these people have paid their money on that assumption, and the assumption fails, they have grievous injury inflicted upon them, and it is one of the difficulties that will be found in any future dealings with the Nené Valley, the result of this apportionment under the Act of 1852.

1001. How comes it that the taxes are levied before the works are carried out?

Because they had to enter into contracts with the people to pay them as the works proceeded, and they had to raise the money or mortgage the tax, which has been adopted. There is now over the valley a mortgage of this 5 *s.* per acre average tax; that mortgage has to be met, and it remains as a permanent average tax of 5 *s.* per acre over the district graduated, one man paying so much more than his neighbour, and the lowest and the worst drained lands at this day paying the most.

1002. Earl of *Sandwich.*] What was the whole amount of money required?

They were authorised to borrow 280,000 *l.* altogether, and that would represent a very much larger sum which could be levied under the Act. A very large sum indeed was spent between Peterborough and Wisbeach, the whole of the money authorised was raised. That was in 1852. In 1854 an application was made to Parliament. The Act is here, and it states that, "Many of the provisions of the Act were based on the assumption that the sums by the Act authorised to be raised for the purposes of the works in the third district would be sufficient for the execution and maintenance thereof. And whereas the incorporated Commissioners have, as directed by the said Act, commenced the works," that is between Wisbeach and Peterborough, "and have ascertained that the amount so authorised to be raised will be insufficient for the execution and maintenance of the works;" and then they had power to get 55,000 *l.* more, and 25,000 *l.* required for certain contingent works, which were certain works for the protection of Wisbeach, and certain works if the Admiralty should require certain opening bridges to be made. Those sums have been partially raised; 55,000 *l.* was authorised by Parliament, and the different interests were ordered to contribute according to an award by an arbitrator named by the Board of Trade. Sir John Pakington was named, and all the interests were represented before him, and he prescribed the proportions in which those sums should be raised. Those sums were raised and were found insufficient. In 1856 the works came to a standstill. Two or three unsuccessful applications to Parliament were made; interest was running on, the contractor was unpaid, and at last, in 1862, the Commissioners again came before Parliament, and with this limited proposal, to make the works secure from the county boundary upwards, to put a small bank to protect the Wash from summer floods; and a proposal was made to meet the difficulty that was apprehended of the interference with the supply of the fresh water to the fen districts by putting a staunch or sluice just above the present inlet into the north level at the "Dog in a Doublet." That Act met with most determined opposition; all the different interests that had contributed to the Act of 1852 were arrayed one against another; the matter was fought; we were six weeks before the Committee of the House of Commons;

all

all the opponents objected to the proposed works, and at last a winding-up Act was passed under which the valley is at present regulated. One great reason of the failure of the works undoubtedly was, that the Commissioners and their engineer, in breach of the obligation imposed upon them by the Act of 1852 to commence the works at the county boundary and proceed continuously upward, began also in a part above Wisbeach and spent there 37,000 *l.* (I think that was the sum), in breach of the obligations of the Act of Parliament, and as the works came to a standstill, what they excavated above Wisbeach at that cost is practically washed in again; and as to that expenditure, all parties, I believe, agree that that money was so much money thrown away. The scheme of the Act of 1862 was that Parliament refused to authorise the construction of the sluice across the river. That was most vehemently opposed by all the interests above and below. It was supported by the fresh water interests in opposition to the navigation and drainage interests; but they granted the Commissioners enough money to pay the contractor and other debts; 43,000 *l.*, I think, was the sum in addition to the 55,000 *l.* which was authorised to be levied in 1854; and they divided the river again into districts. From Northampton to Peterborough forms one district. From Peterborough to the county boundary forms another for navigation purposes. The Nene washlands represent a separate Commission, and the maintenance of the drainage banks below Peterborough, between Peterborough and the sea, was restored back, and the obligation to maintain and repair them was reimposed upon those bodies that were liable to maintain them before the Act of 1852 passed. The present position of the river is this, that between Peterborough and Wisbeach there is no power to deepen or cleanse out any part of it. The construction put upon the language of the Act of 1852 by the Court of Chancery, at the instance of the late Duke of Bedford, was, that the river was to be maintained as it was; the word "Conservancy" is used, not "Improvement;" and when at the meeting of the tide and the fresh water where it has deposited a shoal, the Navigation Commissioners proposed to clean it out, his Grace the late Duke of Bedford interfered, and said that it would admit the salt water and would interfere with the supply of fresh water to the North Level, and an injunction was obtained, which is still in force, preventing any interference with the bed of the river; so that the river is practically left for the powers of nature to work upon it as they choose.

1003. Lord *Meldrum.*] And the floods are getting worse?
Yes.

1004. Earl of *Sandwich.*] Between Peterborough and Wisbeach the state of matters has now become such, as I understand you, that no person has any right to touch the river at all?
There has been a Bill before Parliament for the straightening of the river at Wisbeach and constructing a dock there, and I was solicitor for one of the opponents. The Bill was thrown out mainly on the ground that it would interfere with the supply of fresh water to these districts, and admit the salt water up, and that there was no provision for their protection. As to these interests, I should tell the Committee, though I may have conveyed the impression that they are a slight thing, these interests are of the utmost importance. The North Level contains 48,000 acres of extremely valuable land; it is mainly dependent for its fresh water supply in dry seasons upon what it takes out of the River Nene. There is an equal area, perhaps rather a larger area, of the middle level which has the same dependence, and there is no brook, spring, or well in those districts, and they are dependent upon what falls from the heavens, or what they introduce out of the river in dry seasons. I need not tell your Lordships how very jealously such an interest as that is watched. The engineer of the Duke of Bedford in my hearing before the Parliamentary Committee this year valued the North Level District at 6,000,000 *l.* of money, and that was not questioned.

1005. Does not the tide run up and render this water brackish?
The tide runs up, and the fear of the fresh water interest is, that if you increase the facility for the flow of the tide, you take the salt water higher up the river, and in summer times you have brackish water when they want to draw in fresh. That is the great problem that now remains to be grappled with in the lower part of the Nene Valley.

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1006. Lord *Somerton.*] How far up does the tide come?

There are instances of the water having been brackish at Peterborough, 30 miles from the sea; it has been frequently brackish four miles below; and I should think it has been very frequently so within 10 or 12 miles of Peterborough.

1007. Duke of *Northumberland.*] What depth of water is there in the main channel at Peterborough?

It varies, but in many places in low water the river is dry. It is frequently the case that in summer time a barge may be some weeks getting from Wisbeach to Peterborough.

1008. *Chairman.*] What is the nature of the navigation between Wisbeach and Peterborough?

Lighters, which convey about 20 tons. The navigation above Peterborough is by staunches, a bar across the river with a power of drawing up a board, and that brings down a body of water that can be held within two or three miles of the stream. Towards Northampton the navigation is conducted by locks, but in the last 15 or 20 miles above Peterborough, the river is navigated by means of staunches; that is to say, where there is a mill there will be a weir, and there there is a staunch, and then two or three miles higher up, another staunch, and when the water gets to a certain level they take down the water barrier.

1009. You have given us an interesting account of the River Nene, and the legislation that has taken place with regard to it. I have no doubt your attention has been turned to the subject of the effect upon the river caused by the drainage of the upper part of it?

For a time, unquestionably, the Act of 1852, which provided an improved outfall, gave very great benefit; that has not, in my opinion, been wholly lost. I think that the result of the division of 1862 to some extent was beneficial. I think the interests were too conflicting to work harmoniously in one Commission, and that practically the division which was made by Parliament in 1862, of giving each district authority within its own area, was a wise one. What it wants, in my opinion, is this; I think it is impossible that things should be allowed to remain as they are. I am bound to say that before Parliament I have repeatedly heard it said that the Duke of Bedford and the North Level Commissioners, who have their main interest below Peterborough, are not at all disposed (I will not for a moment impute the contrary) to stand too rigidly on their rights; they express the utmost willingness to concur in any scheme that shall solve the difficulty of protecting their just rights, but they object, and in my opinion they rightly object, to admit any more partial interests into the river below them. I think that some Conservancy Board charged with the interests of the scheme as a whole is necessary, if it can be devised. My notion is that it might be devised. I think that it ought to be, in the first instance, a small Board representing the different interests, not giving one interest the power of out-voting or out-numbering the others; because it is manifest that, if you take for example the interests of the Wash lands, which are to get rid of the flood water, and are adverse to some extent to those who are protected within the banks, and who would wish to have, generally speaking, a good volume of water in the river, that they may derive fresh water, if you put in the representatives on the Commission in the proportion of two to one, because one has a larger area, and you gave them the power of out-voting the others, you may enable them to do very great injustice to those others. But my notion is, that a small Conservancy Board having authority to discuss, at all events, measures affecting the river as a whole from end to end, upon the principle of the Act of 1852, and giving any of the interests represented on that Board a power of appeal to some higher authority, such as the Railway Commissioners, or the Local Government Board, and providing for legislation by means of a Povisional Order, which I myself prefer to an Act of Parliament, would probably be effectual. I think that a small Board would feel the responsibility of the necessary originating or refusing of legislation for the districts much more than a large Board. For example, the qualification for Commissioners between Northampton and Peterborough now is to be owner of 50 acres of land; each man who has 50 acres of land is authorised to act as a Commissioner; there is some small proportion that enables a man to name another Commissioner, or even

two

two Commissioners. I think that is not a body that is likely to legislate fairly, considering the very large interests that are affected; he is apt to cast his vote on this principle (I speak it with great respect); he is apt to think that small interests ought not to be affected; and he has the power of out-voting very large interests. I think a representative Board having power to originate schemes for the whole district, and with a power for any one of the numerous interests that would be represented by such a Board, to appeal in a summary way to some tribunal, that in case of dispute should adjudicate between them, the Provisional Order being still subject to the ultimate appeal to your Lordships' House and the House of Commons, would probably act advantageously. The interests are so large and so numerous, that any one interest proceeding by Bill in Parliament in the first instance, is sure to provoke opposition; there is no means of bringing them together before they get into Parliament; the Bill is passed, or, as it more likely happens, is thrown out. I consider that if there was a kind of committee of the interests, first to discuss it, and then to call in the officer of the Local Government Board, who, as far as my experience on such matters goes, very often softens down and suggests (he is rather a friendly arbitrator than an interested adviser), it is likely to make a more satisfactory tribunal. Always considering the very large interests that are involved, I should not think of removing from them the ultimate right of appeal to Parliament, because the interests concerned are so great.

1010. The appeal to Parliament they would get under the Provisional Order?

I mean that I would not take away that?

1011. But you would set up, as I understand you, a small commission?

In the first instance.

1012. What machinery would you start it with?

At present there are the Commissioners that represent the valley from Northampton to Peterborough; there is the Wisbeach Corporation, which is represented in the Navigation Commission; the Navigation Commission consists of eight or ten members; the Wash Lands Commission for its district consists of eight or ten members; the North Level Commissioners consist of a separate body; and the Waldersey Drainage Commission I have spoken of. The Board might be composed of a representative of one, (say) each of those interests.

1013. I quite understand that you would set up a Board to consist of a representative of each of these interests, but you say "I" would set up; who would set up?

I mean that would be the plan; an Act of Parliament should do it. Supposing your Lordships' inquiry results in a general Act of Parliament, I mean that Parliament should say that the local Commissions, the divisions, and the bodies which would represent the interests upon the stream should in the case of the Nene (I am confining myself to that), each appoint one or more who should represent the channel of the river and its immediate tributaries for the purposes of arterial drainage, leaving (as they now have) the power to tax for the internal drainage of those separate districts as it is; I think that works very well.

1014. Your idea is that the result of our deliberations would, or should, as far as your experience goes, lead us to say that there should be a general Act dividing England into districts?

Yes.

1015. And that River Nene district is quite large enough to be one district?

Yes; it is not a very large River, but it is very important in the interests which it affects.

1016. And the river Nene, considering the magnitude of the interests affected by it, ought to be divided in the manner that you have suggested?

I think I should interfere as little as possible with existing arrangements; I should supplement them.

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1017. Then would you give this Commission that you would set up, the power of levying rates?

I would; they have the power now, but I would give them the power and cast upon them the duty of levying rates for the maintenance of that which affects them all, the main channel of the river, and I would take care to have it made as good as it could be without entering into any large scheme, unless they were all agreed upon it.

1018. Then do you think (I am afraid not from what you say) they would be likely to agree?

Then I should call in the Government Board, either the Local Government Board, the Inclosure Commissioners, or such a tribunal as the Railway Commissioners, which any one interest aggrieved on this Board should have a right of appealing to. For example, suppose there are about five districts; there is the district from Northampton to Peterborough, the district from Peterborough to below Wisbeach, the Wash lands, and the fresh-water interests below. I would give any one representative the right of saying to this Board, "We want so-and-so doing for the common good." I would have it discussed, but I would not let it be final. If the other four chose to say, "No, we are quite satisfied with things as they are; we out-vote you four to one," I would still give that one interest the right of appeal against the decision of the four.

1019. How would you fix your areas of taxation; how far would you take them?

I should give that right, unless they were agreed, to the Board which would frame the Provisional Order.

1020. Then we will assume that these five bodies meet together, and that there is a proposal for carrying out certain improvements of the river for the purpose of doing away with floods, and that that proposal would cost a certain sum of money, a large sum of money; then provided that the five parties were agreed, would you allow them to decide upon what should be the area of taxation?

Yes, I think if they were agreed they would be quite sure not to be hurting each other; they would keep each other sufficiently in check; if they were agreed I am quite sure they would be right.

1021. But supposing one disagreed, then you would give him the right to go to some public authority?

Yes; I would practically make an inquiry by a committee of some public Board before it came to a Parliamentary Committee; that would be the result. I should have it on the spot, because I find that the suggestions of an impartial officer are well received who comes down and looks at the spot, and who gives his opinion; it is given before the parties come in conflict, before feelings are aroused, and it is very often very fairly considered. I have seen it in our corporation where the public officer of the Board of Health comes down, and he smooths down a good many asperities of that kind, the incidents of taxation, and what is best to be done, and he clears away difficulties. Supposing that for a district 10,000 *l.* are wanted; I should let it first be initiated, or considered, by the Conservancy Representative Board; if they will not raise it, I should say that any one, two, or three of them should have the right of appeal to the Local Government Board, for example, and that their official should come down; he would then say "I should recommend that a Provisional Order should be made, and that it should fall on such and such districts, and that it should be carried out by such and such a body, these Commissioners," giving them a right of appeal by objecting to the confirmation of that Order by Parliament. It appears to me a much simpler tribunal than there now is, and much more likely to be satisfactory.

1022. Have you turned your attention at all to the storing of water?

I have not specially; but from the attention that I have given to it, I should allow private parties, or private proprietors, to store the water for themselves. On our river, for instance, where there are many mills, the objection which would be raised to interfering with the water supply, would be the objection which people would have to interfering with the natural flow on which they are dependent. On the other hand, it would be introducing a new element of difficulty. You will see that just at the time the storage of water is wanted

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in the higher districts for the purposes of the summer is the time that it is wanted in the districts below for the fresh-water interests. Now they are very large, and much larger in extent, and area, and value, than the interests above; the taxable area of the valley is 15,000 acres; the North Level alone, which draws in this water, is 48,000 acres; you would be having them objecting directly: and the Middle Level in the same way; they would say, "You are stopping the water which nature would bring us just at the time we want it, and interfering with our right, with the natural flow of the stream." If it were stopped to such an extent as to give any appreciable benefit to the districts above, it would cause great injury to the districts below just at the time they wanted it, and I think the benefit that would be derived would be less than the injury inflicted.

1023. To go back to the question of rating, do you think it would be practicable for the persons representing the various interests to rate the land in proportion to the benefit it derived from the works carried out?

According to my experience, I should not like to recommend or ever attempt that; I should take care to have an area introduced, all of which should derive some benefit, and then I should say equality is equity. My experience, judging from the Nene valley, is that all these things must depend upon estimate, and that engineers and others are likely to make the most favourable estimates, and that the weaker party, that is, those who are disappointed by the failure of the estimates, are those who in the end would suffer. Take care not to introduce any that would not derive benefit; but when you have got the area that derives benefit tax it equally.

1024. Earl *Stanhope.*] Would you only wish the rivers to be under the Commission, not the watersheds?

The watersheds; the lands down the valley that are affected by the small floods are very well protected as it is.

1025. We have had a proposal that it should be the river basin; you do not go to that, as I understand you; you only go to the river course?

The river basin that I am speaking of is now all under one Commission, because the river basin from Northampton, or above Northampton to Peterborough is the basin.

1026. The area of the basin of the River Nene, with the affluents, is 1,132 square miles; would you have all that under the Central Commission?

No, only when the interests involved required some contribution from them for the purposes of the Central Commission; but I should trust to them to take care of their own district, the small streams, and keep the ordinary channel of the river by the tax which they have power to raise, which is 5 *s.*, and as to which I do not think there is any complaint, and spend it in their own district; and I should not allow them to let the river grow up; they should do all the ordinary repairs to the river bed, and take care of the weirs and the different streams; and I should not dream of calling upon any other district to contribute to that. I think each portion should pay its own expenses, except where they are called upon for some contribution for general outfall purposes. For example, if in the Nene a good seaward outfall were made, if an improvement of the existing seaward outfall were found necessary, I think the whole shed of the valley should contribute to that. That is a point that I would insist on.

1027. *Chairman.*] Then do I understand that the Nene would come within the water-shed of the Ouse?

No, it is quite a different water-shed altogether.

1028. Then you would describe the Nene as a water-shed of itself?

Quite so.

1029. And you would deal with it as a water-shed of itself?

I would deal with it as a water-shed of itself, taking care to prevent any interference with that flow from the Nene into the system of the Ouse which now passes through Standground Sluice; no interference with that, I am sure, would be permitted without most desperate resistance.

1030. Lord *Penrhyn.*] There is a very large district above the district which you have included as far as Weedon, what would you do with that?

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That is under a separate Commission, and I would leave that unaffected. Its natural interests are of a distinct character from those below Peterborough; their sole object is to get the water down to Peterborough, and then they say, get rid of it.

1031. That you would not include in your system of districts, of which you have been speaking, at all; is that so?

Yes, I should, to this extent, that they should be occasionally called upon to contribute to improvements below Peterborough; the perfection of the outfall is dependent upon the state of the river below Peterborough; that is to say, if there is a block below Peterborough, the districts through all the way up feel it more or less.

1032. Then you would include those in your area of taxation to a certain degree?

Yes.

1033. And would you include them in the representation?

Yes; I should let the whole river-shed be represented, but I should protect them from their neighbours or people attempting to tax them improperly by giving them a right of appeal.

1034. And representation?

They should have the representation too.

1035. You spoke of the navigation from Peterborough downwards; you did not name those above?

I meant to do so.

1036. Earl of *Sandwich.*] I think a very large sum was spent at Wisbeach?

Very large.

1037. Which ought not to have been spent there?

It ought not to have been spent where it was.

1038. Was there nobody to overlook that, and see that the money was properly spent?

The Commissioners were the parties representing all interests, and when we were before Parliament, in 1862, and endeavouring to justify that expenditure, we said it was done upon the advice of our engineer, under the belief that all the work would be carried out; this was the answer that was given. The Wisbeach people found fault with it; the Commissioners said the engineer represented that in working upwards, the scour brought down the bed of the river above; and if we began at another part and worked up to that, we should be getting on better and faster; practically we had to dig out the same place twice.

1039. Practically, the effect of it is that some land is taxed at the rate of 16*s.* or 17*s.*, and gets no benefit at all?

No benefit.

1040. And is taxed for ever?

Yes.

1041. Lord *Somerton.*] You said that the storage of water would cause some difficulties; have not there been some difficulties already between the North Level Commissioners and the railway company, on that point?

No; the difficulty which has arisen with the North Level and the Middle Level Commissioners is that the railway companies are exercising their rights as riparian proprietors, having land upon the bank; they put steam engines there, and draw water to supply their steam engines; it is for the daily use of the railways; the railways have no reservoir; they merely pump out of the river.

1042. May I ask you another thing; I suppose we may take it from your evidence, that even now, under the most favourable circumstances, the supply of fresh water taken by the north level is of a very indifferent quality, even at the best?

It is of an indifferent quality at the time when it is most wanted, because it is apt to have a tendency to be brackish; and there are other things which operate that way; it is river water passing through villages and towns.

1043. Lord

1043. Lord *Meldrum.*] And at the present moment the river is receiving the sewage of Peterborough, is it not?

At the present moment if it were low in the river, there would be the sewage of Peterborough no doubt, but I leave that out, because we are taking steps to deal with it.

1044. Lord *Penrhyn.*] Have you any plans that you could show the Committee showing the sluice that diverts the water?

(*The Witness produces a Plan, and explains it.*)

1045. Lord *Meldrum.*] As to the supply of the fen lands with spring water in the summer months, in your opinion, if there were staunches erected in the river above Peterborough to keep the water up more in the summer month, would they not by that means get a better supply of water secured to them?

I have no doubt it is practicable if you can reconcile the interests of the Middle Level and the North Level.

1046. Then, supposing that the opposite proprietors and the Nene Navigation Commissioners undertook to erect staunches above Peterborough to keep up the water there, would not that be a *quid pro quo* for allowing the river to be scoured out from Peterborough to Wisbeach, and below Wisbeach to the sea?

It might be so.

1047. Do you think that would be a feasible plan by which the requirements of the gentlemen in these fen districts would be satisfied?

I should think it would require a good deal of consideration and advice of engineers as to the effect of it, whether it would be advisable for the interests of the upper proprietors to do it.

1048. But in your experience of the river the only feasible plan of improving the drainage of the upper districts of the Nene is to commence at the outfall and work upwards?

Yes, certainly.

1049. Instead of doing what they did, they ought to have done that?

I think where they began at the county boundary below Wisbeach, was quite right. I think the scour would have provided water, but before they got up to Wisbeach they began above as well. That was what caused the expenditure of the money wrongly. They were directed to begin here (*describing it on the Plan*), and to work up to Peterborough. They began here and here (*pointing to the Plan*) at the same time, and they scoured this out, a part of it, and this was all washed in again (*describing it on the Plan*).

1050. But the present outfall of the Nene could be very much improved; widened?

No doubt it might be, but directly a proposal is made, it is opposed by the fresh-water interests.

1051. We in the upper districts wish to have the outfall improved and the river deepened from Peterborough Bridge to Wisbeach, but we are unable to move because we should instantly be opposed by the proprietors of the fens?

That is so.

1052. I think you were asked a question about the drainage of the uplands; you have known all the districts round Peterborough a long time; is it not the fact that the improved drainage of the country has increased the floods, sent the water down quicker to the valley?

Undoubtedly it has. But I think that for some time while the improvement under the Act of 1852 was in force, before we lost that benefit, one counterbalanced the other. I think we got rid of the water; for a long time we were without summer floods.

1053. The summer floods are those which do the greatest mischief?

The difficulty also is, that the proprietors both of the washes and the meadows would be very sorry, I believe, to get rid of the winter floods; it is the floods between now and October that we do not want.

1054. You would like to go back in a certain way to the Act of 1852, to the appointment of Commissioners?

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The principle of the Act of 1852, in my opinion, is a correct one, namely, to put the whole river under one general body; but I think the body was too unwieldy for the purpose..

1055. Does Peterborough pay any rate towards the drainage of the River Nene?

It paid a contribution in 1852; it does not pay anything directly.

1056. If the main channel of the river from Peterborough to the sea should be improved, do not you think Peterborough should be taxed?

It would be my duty, as mayor, to object to that.

1057. *Lord Somerton.*] We have been told this by one witness who made a statement with regard to the Nene; he said, "We have had some experience of that on the Nene, and so far as I am informed, they have spent 150,000 *l.* there; they have taxed the land to the very utmost power of endurance, and they have not succeeded in doing their work." Now, according to your experience, is that the state of the case?

They have spent the 150,000 *l.*, and the work that was proposed for that has not been done, and the tax remains.

1058. But as much as 150,000 *l.* has been spent, has it?

Yes.

1059. And spent in vain?

Not entirely in vain; I should be very sorry to say that; but certainly it has not yet fulfilled the expectations that were raised, and which, I think, might, under different circumstances, have been fulfilled.

1060. Lord *Penrhyn.*] Is the tax of 16 *s.* or 17 *s.* an acre that you speak of an annual tax?

Yes, until the mortgage debt is paid off.

1061. Duke of *Bedford.*] There is no sinking fund?

There is no sinking fund. The 16 *s.* or 17 *s.* an acre is exceptional; the 5 *s.* tax of 1852 was increased by the Acts of 1854 and 1862 in the relation that 90,000 *l.* bore to the 280,000 *l.* that was originally authorised.

1062. How came it that these bits of land were taxed so heavily?

Because they are the sinks of the drainage, the low flats and the low meadows.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Monday next, at Twelve o'clock.

Die Lunæ, 14° *Maii*, 1877.

PRESENT:

Duke of BEDFORD.	Lord MONSON.
Duke of NORTHUMBERLAND.	Lord VERNON.
Marquess of SALISBURY.	Lord MELDRUM.
Marquess of RIPON.	Lord PENRHYN.
Earl COWPER.	Lord SOMERTON.
Earl STANHOPE.	Lord WINMARLEIGH.
Viscount EVERSLEY.	

THE MARQUESS OF SALISBURY, IN THE CHAIR.

MR. BENJAMIN SHAW BRUNDELL, is called in; and Examined, as follows:

Mr. *Brundell.*
14th May 1877.

1063. *Chairman.*] You are a Civil Engineer, I think?
I am.

1064. Of the town of Doncaster?
Yes.

1065. What rivers are you best acquainted with?
The River Don.

1066. Has that suffered much from floods?
Very much; particularly within the last six or seven years.

1067. Do you attribute that simply to meteorological causes, or to any other causes?
I think it is due principally to the better drainage of the country, the watershed generally; I think the water now gets more rapidly into the river; and also it is due to the bad state of the rivers themselves, which have been getting worse instead of better, whilst the drainage of the land has been getting better.

1068. Why have the rivers been getting worse?
From neglect. In the manufacturing districts refuse of all kinds is thrown into the rivers, and the floods, to a certain extent, do clear them, and if it were not for the floods they really would be practically stopped up in places. The floods are very valuable in that respect.

1069. Do the floods bring down any amount of soil?
Immense quantities of filth of all kinds.

1070. Which they spread over the bottom of the river?
At the bottom of the river; it gets cleared out very much, because the bottom part of the River Don is embanked; but where the river is not embanked there it spreads over the land adjoining and leaves a deposit; but where you get banks on both sides, and where the river is confined, it goes to the estuary.

1071. You attribute the raising of the bed that you complain of to the refuse that has been thrown in, not to the action of floods?
Yes;

Mr. *Brundell.*

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Yes; that applies more particularly to the upper parts of the river. There are no manufactories on the lower parts of the river; it is only on the upper part of the watershed where these manufactories occur to any extent.

1072. Then it is only in the upper part of the river that the bed of the river is being raised?

It is only in the upper part of the river, as far as the Don is concerned, that the bed is being raised, because the outfall of the Don is embanked for something like 20 miles, and that is kept clean by the enormous scour of the water coming down. In dry weather that will get silted up to a very great extent; then the floods come and clear it out.

1073. Then is that part of the river liable to more floods than it used to be 10 years ago?

I believe the flood of 1872, and the flood again of 1875, were larger than anything recorded.

1074. But those must have been due to the amount of the rainfall, and not to the state of the bed of the river?

Not to the state of the bed of the river; they were due to the rainfall, and to the readiness with which the rainfall now gets into the river compared with what it used to do; I can attribute it to no other cause.

1075. You do not agree with Mr. Rawlinson, that the increased drainage has no influence in increasing the magnitude of floods?

If Mr. Rawlinson has said so I do not agree with him.

1076. You think that the drainage has had a decided effect in that respect?

I think so; the rainfall has not been greater, and yet we have bigger floods; I therefore can only attribute it to the rainfall getting into the river more quickly.

1077. Has the damage done by the floods been very great?

It has been enormous, particularly near the outlet; the lower part.

1078. Has it been confined to the lower part, or has it spread all along the valley of the river?

All along the valley. My attention has been more particularly called to the lower part of the valley, because I represent a large drainage district near the outfall of the river.

1079. But that is a part of the river where you say the banks for 20 miles have been raised?

We have raised them.

1080. But not raised them enough?

They have not been raised enough; the reason is that we are to a certain extent tied down. We went to Parliament in 1872 for power to do further works in raising banks, but there is a district below us where, if we had raised our banks as much as we ought to have done for our own protection, we should have placed them in jeopardy; and fearing their opposition before Parliament, we curtailed what our works really should have been.

1081. What sort of an amount of damage is done by one of those great floods?

The flood of 1872, which sent our Commissioners to Parliament, was supposed to have done a damage of 70,000 *l.* on 15,000 acres of land. Our district was 15,000 acres, and it was believed that the district suffered to the amount of 70,000 *l.* by the flood of July 1872; that was a summer flood.

1082. What was the character of the damage?

It was in the summer; it destroyed growing crops. It entirely destroyed the hay crop in that valley, and there were wheat fields and fields of barley submerged for days; they were destroyed.

1083. What is the length of the river along which these 15,000 acres lie?

Twelve miles.

1084. Then there is below you a considerable district which, if you had been saved from this flood and this damage, would itself have suffered largely?

If

If our banks had been high enough to have saved us, they would have suffered more undoubtedly.

1085. Is there a larger country below you than 15,000 acres?
It is about 17,000 acres.

1086. Did they on this occasion suffer?
They suffered very much.

1087. But they would have suffered much more if you had been saved?
They would.

1088. And how many miles does their 17,000 acres extend by?
About the same, 12 miles.

1089. Then in order to save the 17,000 acres being more injured than they were, you were exposed to 70,000 *l.* worth of damage?
At that time we had not been to Parliament to carry out our improved works. At that time our works were the works authorised by an Act in 1827.

1090. What date then are you speaking of as the date of the flood?
In July 1872.

1091. And then you had not carried out your new works?
We had not carried out then our new works; and what I say is this, that when we went to Parliament in 1873, we limited the extent of our works, fearing the opposition of the district below us before Parliament, to that which we thought they could not reasonably oppose. It permitted a raising of the banks and works, but not so great as would have made us entirely safe.

1092. Do you imagine that if you had carried out your works as you originally intended they would have suffered 70,000 *l.* worth of damage extra in consequence?
I do not know that they would have suffered to that extent. They would have suffered no doubt to a great extent, but I am unable to say to what extent they would have suffered.

1093. But that was in 1827 that you spared them, was it not?
No; our original Act was obtained in 1827, and under that Act we had certain works existing in 1872; then we went to Parliament in 1873 for further powers, but we then limited the extent of our works from the fear that we should be opposed by the district below us if we went for such works as would place them in any very considerably more dangerous position than they were then in.

1094. Then this was all after the great flood; so that even if they had not opposed you, and Parliament had given you the powers, you would not have been saved that 70,000 *l.* worth of damage?
No, it was after that we went to Parliament; after the damage had occurred.

1095. Now should you be safe against such a flood?
No, we should not be safe against such a flood now. Although we have spent at the present time 25,000 *l.* upon the river, we should not be safe against such a flood as that. We are safe against the smaller floods which used to injure us.

1096. Were those smaller floods very frequent?
They were frequent.

1097. What sort of average number in a year?
In each winter we should get two or three floods. The works we have been able to carry out will save us from those vexatious floods, but not from such a flood as that which we had in July 1872.

1098. You had nearly as bad a one in 1875, had you not?
In 1875 we had very nearly the same flood again in point of height. But what I should like to point out to your Lordships is this, the enormous cost which a small district near the outfall has to go to in providing for the drainage of a large district above. The great part of the money we are spending is spent in the improvements of the river, without which we could do nothing, and the river is practically the drainage of an enormous watershed which pays nothing to us at all. We are only able to tax our own district, although we are

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obliged to provide for the drainage of 460 square miles of watershed above us. In our works we could do nothing whatever unless we dealt with the river, because we get a direct overflow of the river itself.

1099. But you do not do them any good?
We do them this amount of good that they get a better outfall.

1100. But they would not be seriously affected if you and your works did not exist?
No, they would not be seriously affected, but we should get the water.

1101. Just as much as before?
Yes; but what wants to be done is that the whole river from end to end should be placed under one authority, so that if works are carried out at one point they should have reference, not only to the drainage of the particular district that they abut upon, but to that of the districts above and below them. Take a case; if the valley above us were to go to Parliament for power to make works to improve their river, as they could do, our works would be almost valueless for our purpose; because by an improvement of the river above us the water could be brought down so much more rapidly into that part of the river upon which we abut that our works would be quite ineffectual. We were obliged to rely upon things remaining as they were in the valley above us.

1102. The people below you then prevent you from improving the river for your protection, and you prevent the people above you from improving the river for their protection?
We did not want to risk any opposition that we could very well help. We have a very small district on which we can make a rate, and we were afraid Parliament would not give us power to do works which would seriously affect the district below; therefore we made our scheme as limited as we could for our purpose; and of course if a district above us were to go to Parliament we should oppose, and say, "We have already spent a large sum of money, and we ask that Parliament should not permit a district above to drain in such a way as to make null and void all that we have done." We might not be listened to, but that would be our case.

1103. And I understand also that you think that those above you ought to bear part of the expense of the improvement that you have made, or that you are going to make?
I do not say that. I think this, that the river should be made larger where we are, and then it would drain without affecting us, the district above us, and to that extent they ought to bear a proportion.

1104. If the river was made larger, then you would have no cause to oppose their improvements?
None whatever. If the river were placed under one authority, say from end to end, I take it that a Conservancy Board would take care that no one part of the river should be improved at the expense of the drainage of another; that it should be one comprehensive scheme by which all the valley would be benefited alike; then it would be fair that every part of the valley should bear its proportion of the cost of that.

1105. You have spent, I think, 40,000 *l.* on these works?
We shall have done when we have completed them, at the end of this year.

1106. A portion of which is in Parliamentary expenses?
It cost us 7,000 *l.* to get the Bill through Parliament. We were opposed in both Houses; we had an opposition consisting of mill-owners, the Doncaster Corporation, the proprietors of the navigation, and small landed proprietors, who were frightened at the effect of taxation on the land; and the consequence was, that it costs us 7,000 *l.* to get our Bill through Parliament; and, I believe, the opposition spent 3,000 *l.*; so that, in fact, it cost 10,000 *l.* in preliminary expenses out of 40,000 *l.*, which is the extent we are able to tax the land, really to get authority to do what was absolutely necessary.

1107. How do you obtain the 40,000 *l.*?

We

We borrow it, and have power to repay it in 30 years, principal and interest.

1108. Then you must borrow it at something like 6 per cent. ?
About that.

1109. Is the 2,400 *l.* interest raised upon the 15,000 acres ?
That is raised upon the 15,000 acres.

1110. Besides the ordinary expenses ?
Besides the ordinary expenses and maintenance.

1111. That makes a heavy burden upon the land, does it not ?
Well, it is a heavy burden upon the land, no doubt ; but if we could keep the water off, it would be a very light burden.

1112. But you do not keep the water off, do you ?
We do keep the water off, except in such extreme cases as I have mentioned to your Lordships ; that is, such floods as occurred in 1872 and 1875. We do keep the waters off in four or five out of six floods ; certainly we keep it off to as large an extent as that.

1113. You do not keep off the very large floods, but you keep off the small ones. Have you at all calculated what the annual damage due to these small floods, which are now prevented, used to be, under the old state of things ?
I have never calculated it in money. They were very vexatious and very troublesome. The extremely low lands were under water the principal part of the winter.

1114. That did not hurt them much, did it ?
It did hurt them ; because though it does not hurt land to have water passing over it, and soon off, it does hurt land very much to have water stagnate on it. We sometimes had water on that land for five or six weeks at a time ; that is very injurious. The water flowing off in a day or two is no serious injury to grass land, but water left on any land for any length of time is exceedingly injurious. Then there is another state which is not actual flood, but a state of the water within a foot or two of the surface, which keeps the land in a water-logged state, short of being submerged, which is very injurious.

1115. You have never calculated at all the difference in a grass crop under the old system and under the new ?
No, we have not been sufficiently long under the new to see what the value is.

1116. Then you do not know what you have to show against this 2,500 *l.* which you spend annually for having made these new works ?
We do not, in money ; but we believe that the land will let for from 10 *s.* to 15 *s.* an acre more for being relieved from the liability of these floods.

1117. Small floods ?
And one of these serious floods only occur in four or five years. Of course that is immunity to a great extent in floods.

1118. Have you any basis of fact to go upon when you say you would get 10 *s.* or 15 *s.* per acre rent of land more in consequence of immunity from these small floods ?
No ; but that is the general opinion of the tenants, if the water can be kept off them that they will be able to pay a greater rent. For instance, on these grass lands it is sometimes impossible to turn out cattle until the end of May, or June ; if we have a very wet spring, and then, of course, the summer is a very short one indeed, and sometimes these floods coming in as early as September or October, it makes a very short year to use these grass lands.

1119. What other rate besides the cost of this improvement have you to impose upon the land ?
In respect of drainage we have no other rate, except in the maintenance of the works, as well as the interest on the borrowed money.

 1120. How

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1120. How much does that cost?

The maintenance of the works about 800 *l.* a year, in addition to the interest on the borrowed money.

1121. Then that is a rate of about 4 *s.*?

An average rate of about 4 *s.* an acre. I may say that the rate is not an acreage rate; it is what is called a proportionate benefit rate.

1122. How is that devised?

In this way: upon the levels of the land; the lands most liable to floods bear the highest rate; the extreme low lands will work out as high as 5 *s.* or 6 *s.* an acre; and as the lands approach the bottom of the hills they are reduced to as low as 6 *d.* or 1 *s.* an acre.

1123. Who settles that?

A Commissioner named in the Act; at least there is power to name him in the Act; but he is appointed by the Board of Commissioners.

1124. He settles, without appeal, how much each man has to pay; is that so?

Not without appeal. There is an appeal to the justices in quarter sessions in the case of any person thinking he is improperly rated. But I may say we have never had a case of appeal yet. The Commissioner goes over the land and examines it, and is furnished with the comparative levels of the land and also as compared with the outfalls, and upon that he makes an assessment or rate upon each field separately, and this is worked out according to the amount of rate which is required to be raised; the number of decimals which each particular field has to bear is determined, its proportion to the whole rate worked out, and the result gives very general satisfaction. People see that the lands least benefited have to pay the least rate, and the lands most benefited pay the most; and we have had no case of appeal against this rating.

1125. Did you incur any expenses in 1827?

I could not tell you; we have no records.

1126. You have no debt from that period, I mean?

No; whatever was done in 1827 was wiped off before I knew anything of the drainage.

1127. Then I understand your view to be that the whole valley, instead of your particular 12 miles of it, ought to be under one authority?

So far as the river is concerned, but not so far as districts are concerned. What I advocate is, that the whole of the river, and not only the river, but taking the case of the Don, it would be the Don and its principal tributaries, the Dearne, the Went, and the Rother, should be under a chief Conservancy Board, but that drainage districts should be under Local Drainage Boards.

1128. Who should determine the relative contribution of the various parts to these works, which would be necessary?

I should propose that the chief Conservancy Board should have power to appoint, just as in the case I have quoted, Sub-commissioners to determine the amount of rating; that there should be an appeal from that, and that that rate should be called the general rate. All lands that would benefit by the improvement of the river should pay a contribution to meet the general improvement.

1129. In proportion to the benefit received?

In proportion to the benefit received, to be determined by an expert. Then that facility should be given to the chief Board for the formation of minor drainage districts, and that there should be districts such as I have mentioned of 15,000 or 10,000 acres, just as physical circumstances make desirable by the contour of the valley, and that the Local Drainage Boards should carry out minor works of drainage into the main river drainage, with power to tax under what would be called the special rate for these special works. If people preferred to be flooded to availing themselves of this power, they would be doing no harm to any one else, and they could remain out; but my opinion is that the majority of the valley would form itself into District Drainage Boards that would take advantage of the general drainage afforded by the improvement of the river. If they

did

did not choose to do it it would be their look out, and nobody but themselves would suffer by that.

1130. What is the average rent of land in the valley?
It will vary from 2 *l.* an acre, where it is held in connection with farms, to 4 *l.* or 5 *l.* near towns.

1131. Lord *Winmarleigh.*] What has been the increased average in consequence of your works?
There is no increased average at present, because our works are incomplete at the present time.

1132. *Chairman.*] And if the works which you dread in the upper part of the river were made, and your works are made useless, a new rate probably of not less than 4 *s.* on the acre would have to be laid upon the land?
I think what we have done would be considered; where a district under powers has done works, that would be a consideration as far as those works could be made available for a general scheme to relieve, to a certain extent, the liability of these lands; what we have done should go in relief of us; and the amount of that would, I think, come properly under the work of a rating Commissioner.

1133. Have the 17,000 acres below you spent any money in works?
They have spent largely on works in the last 20 years.

1134. Have you any knowledge what the amount of rate is in consequence?
I believe their rate is something like 4 *s.* or 5 *s.* an acre.

1135. Duke of *Northumberland.*] What is the name of that body?
That is called the Hatfield Chase Corporation.

1136. How far do they go down the Don?
They go down to the Estuary, down to Goole.

1137. They have the charge of the Dutch river?
They have the charge of the Dutch river; the Dutch river is maintained by the Hatfield Chase Corporation.

1138. How far does the tide flow up the Don?
The tide flows up within three miles of Doncaster; it is only appreciable at spring tides as high as that; but within five or six miles of Doncaster it is appreciable at ordinary tides.

1139. Does not it throw a very great weight of water upon the land?
It does not throw any water upon the land. Of course when it becomes a flood, our floods are very much determined near the outfall by the state of the tide; the same amount of rainfall with neap tides will not give us anything like the flood at the outfall that it will with spring tides.

1140. Do the warp lands below you, between Doncaster and Goole, pay an assessment at the same rate as you?
They pay to the Hatfield Chase Corporation on the same principle of proportional benefit; the lands are all rated according to the presumed benefit received by the work, not by an even acreage rate.

1141. I believe the towns have, in most cases, no power of embankment or protecting themselves from flood?
None, as far as I know.

1142. In the other districts they must be subject to severe losses at times?
They are at Sheffield in the Don Valley; they have enormous losses at times in flood.

1143. They would be included, I conclude, in your scheme of conservancy?
Yes.

1144. And be rated in proportion to the benefit?
Yes, according to the benefit they received.

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1145. You would not leave in the hands of those towns the power of determining whether they should be so rated?
Certainly not; I think I would do this, I would let them be represented on the Conservancy Board. I think that the mayor of every town and the chairman of the Local Board in every district having jurisdiction in which a river passes through, should be *ex-officio* members of the Conservancy Board, and should have no power to exclude themselves.

1146. Would you give them a representation proportionate to the rateable value or to the numbers of the population?
They would have to have representation in some such way as that.

1147. They then would absorb the whole power of the Conservancy Board in nine cases out of ten?
Of course in a place like Sheffield the population of the parts liable to be flooded is only a very small proportion of the whole population. I think, in the first instance, the Board must be nominated in all these cases, because the first thing that the Board has to do is to determine its district, and until you determine the district, you cannot say who would be electors within it.

1148. But you would not allow these districts to have a competing power with the Board of the Central Conservancy?
No, I would not; it might defeat the ends of it.

1149. The power of assessing a rate must remain with the Central Board?
It must, and must be done, in my opinion, by an expert to be appointed by them.

1150. And of determining also the decision on the propriety of any works that might be undertaken by the district?
That must be clearly within the Conservancy Board alone.

1151. Then what power would remain to the Local Board?
They would be represented upon the Board.

1152. But you would not give them any substantive power whatever?
Except the power of having their case properly stated at the Board.

1153. Lord *Penrhyn.*] Would you give the Central Board the power of apportioning the rate to the different districts, leaving it to the Local Board to distribute that rate amongst the occupiers or owners of land in that district?
I would give the Central Board power to determine the contributions to be paid by all the lands benefited to the general works of the river improvement.

1154. On one general scale?
On one general scale from end to end. And then in the case of small districts, where they carried out works of internal drainage by tributaries to the main river, they would have power of rating their particular district for their particular works.

1155. Duke of *Northumberland.*] Was any of the warp land flooded in this last heavy flood?
A good deal of it.

1156. Lord *Vernon.*] Do you personally know the River Don at Sheffield?
Yes.

1157. What was the rise of the flood in 1872 above its ordinary state?
I do not know exactly what it was above its ordinary state, but I should think it was from 12 to 15 feet above its ordinary state.

1158. And I remember on a committee hearing that there was great damage done to the lands immediately below Sheffield by the refuse which was washed down at the time of the floods; is that the case?
That is quite the case.

1159. How far does that affect land downward?
It would affect land, I dare say, as far as Aldwark, and five or six miles down, and even as far as Mexborough.

1160. The

1160. The damage is from iron refuse?
Yes.

1161. The damage extends to some miles below Sheffield, and then again below Rotherham, does it not?
It does. I may say that it extends much further, but the mischief was less, because when you get lower down the river the river is banked, and therefore the deposit was made within the bank of the river. It was most offensive after the floods for weeks, even below Doncaster, between Doncaster and the sea; but higher up where in some cases there was no bank the refuse deposit was spread for a mile in width over the valley.

1162. That rendered the land absolutely valueless?
Absolutely valueless for a time.

1163. When you say floods are valuable, you mean ordinary floods in an agricultural district?
Yes, but the floods are very much less valuable than tidal waters; it is tidal waters that are so valuable that bring up warp, and with regard to all the lower part of the district of the Don which is warped, it is not by the deposit of the river running down, but by the deposit of the tidal water running up.

1164. How do you think all the refuse ought to be disposed of?
That is a difficult question; it ought not to go into the river.

1165. You think it ought to be kept out of the river?
It ought to be kept out of the river undoubtedly; what is to be done with it is a difficult question.

1166. Lord *Penrhyn.*] The River Don has been dreadfully polluted for a long time, has it not?
It has been polluted for a long time, and is now polluted; it has the whole of the drainage of Sheffield in it now, and the whole of the drainage of Rotherham, as well as the refuse from the works. The only town in the valley that has taken its sewage out is the town of Doncaster, where they pump it out upon a farm.

1167. *Chairman.*] How long has that been going on?
The farm has been in operation for four years.

1168. Lord *Vernon.*] The sewage system of Sheffield is not completed yet?
No.

1169. Earl *Stanhope.*] Assuming that this Board is constituted as you propose, what would be the remedial measures which you would suggest for preventing floods?
The remedial measures would be, first, embanking; secondly, the removal of weirs.

1170. Removing weirs altogether, do you mean?
No, I would not remove them altogether; I would have them inoperative as weirs in times of flood; I would make the weirs into falling weirs, so that you could prostrate them in times of flood. They are no use as weirs in times of flood to the mills, because the mills cannot work then. I have done the same thing at Doncaster in a mill there; I have made the weir so that it is constructed with doors, and when a flood begins to come down, they drop these doors, and the weir disappears as an obstruction; as soon as the flood is gone away, the doors are lifted again, and form a weir for mill purposes as before. I consider that the removal of these weirs is most important in times of flood, particularly at the earlier stages of the flood. At the top of the flood the weir becomes submerged; but during the earlier period of a flood it is a great obstruction.

1171. But we have heard in evidence several times that if you remove a weir in one place, it does not affect the whole level of the river, but only affects the districts in the neighbourhood of which these weirs are constructed; that some parts are flooded just the same?
That is true, that it will only affect the section of the river which the weir

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obstructs; but as these occur all the way up a valley, it amounts to continued obstruction.

1172. Then have you any other remedial measure to propose?
The embanking of the river, and the removal of the weirs, and the preventing of refuse being thrown into the rivers in the upper parts of them, where there are mills and works, and increasing the area of the river at the lower end.

1173. Earl *Cowper.*] I think you said that you would apportion the rate of the proprietors entirely according to the amount of benefit received?
Yes.

1174. Would you not take into account at all the share they may have had in causing the floods?
I think you hardly could; it would be introducing a very difficult element indeed into the consideration.

1175. Do you believe that it is in the power of the proprietors to do much in the way of causing a flood?
I do not think so.

1176. Lord *Meldrum.*] With reference to rating in proportion to the benefit received, I understand that you would estimate the benefit before the works were carried out?
I did not say that, but it must necessarily be prospective to a certain extent; that is to say, the rate must be made as soon as the works are determined upon, and must be to a certain extent on the assumed benefit which will take place from their being carried out. But I would go further, and I would require that at the end of four years, or some other time, the rate should be revised by a similar authority to the one which created it, so that if the effect was not what he calculated, the injury would not remain for any length of time.

1177. Then you would put a higher rate upon the lands which were lower rated to begin with, in order to make up the deficiency?
If it turned out that some lands had been too high rated, they would be reduced.

1178. Then there would be a deficiency in the income to be made up?
No, the income must be made up. Supposing you are going to spend 10,000 *l.*, or whatever the amount is, you may raise the 10,000 *l.*, or at least a portion of it; that which you are spending at that particular time you must raise, and if it did so happen that the Commissioner had miscalculated, it would only be for a short time that the injury would remain.

1179. We have had evidence before us of low-lying lands which, as they were estimated to receive the greatest benefit from works done in the river, were rated at the highest rate, but the works which were to be carried out failed, and now those low-lying lands, which are rated very high, are the least benefited. You would propose to have the same Commission re-organise that rate; but the lands which were rated at a comparatively smaller rate, would not stand being rated at a higher rate to make up the deficiency, would they?
It might or might not be so. I can hardly imagine such an extreme case as that where the amount to be paid would bear no relation to the benefit received.

1180. We have had direct evidence of it in this Committee?
I am ignorant of the circumstances of that case; but in all the cases with which I am acquainted, I can only say that nothing of the kind has arisen.

1181. Lord *Winmarleigh.*] You stated that on 15,000 acres in a length of river of 12 miles, 70,000 *l.* worth of damage has been done by one flood?
Yes.

1182. Could you give the Committee any idea of the damage done from end to end of the Don by that flood?
It would be represented by hundreds of thousands; I could not give any nearer idea in figures.

1183. By

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1183. By that one flood damage was done to the extent of hundreds of thousands, you say?
By that one flood.

1184. *Chairman.*] That was a summer flood?
It was a summer flood; it was an extreme case, undoubtedly.

1185. Lord *Winmarleigh.*] Do you think any part of the river suffered more than the 15,000 acres of which you have control?
I do not think any other, acre for acre, suffered more than we did.

1186. But you think very nearly so?
I think very nearly so. I think in the towns they suffered very much indeed where works were flooded; area for area, much more than we did.

1187. What is the length of the Don?
Fifty-seven miles.

1188. Do you know the amount of the watershed?
Six hundred and eighty-two square miles is the watershed of the Don.

1189. And is a large portion of that low-lying land?
No, I should not say a large portion of it was low-lying land.

1190. Earl *Stanhope.*] In this book which I hold in my hand, "River Basins," by Mr. Williams, the area of the Don is put as 4,290 square miles, that is including all the tributaries?
But I include all the tributaries in my figure.

1191. "Area of the basin, 4,290 miles," it is put here?
That is quite a mistake.

1192. Lord *Winmarleigh.*] About what proportion of that is low-lying land that would be affected by floods?
It would be only a wide approximation of mine, but perhaps 120 square miles out of 682 would be valley lands.

1193. That is more than one-sixth?
About one-sixth.

1194 Marquess of *Ripon.*] I suppose that you propose to rate such parts of towns as may be exposed to floods?
Yes; and I may say that in the Act which we obtained in 1873, that point was very much contested, and we got a power to rate lands as lands with their buildings; all buildings upon agricultural land, and held with agricultural land, were rated not as buildings, but went with the land; all other buildings we had the power to rate as buildings on a scale which was thought to be equal to the mode of rating lands. We had no power to rate buildings that formed part of the occupation of land as buildings.

1195. But houses in the low part of Doncaster are rated as houses?
We rate them as houses.

The Witness is directed to withdraw.

MR. MARRIOTT OGLE TARBOTTON, is called in; and Examined, as follows:

Mr. *Tarbotton.*

1196. *Chairman.*] You have been for many years Chief Engineer to the Corporation of Nottingham, have you not?
I have.

1197. Are you well acquainted with the basin of the Trent?
Yes.

1198. Is that a river that is liable to floods?
The River Trent, in the neighbourhood of Nottingham, is especially liable to floods of a very serious character. The town of Nottingham lies upon the

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River Trent, and the southern portion of it, known by the name of the Meadows, which is now rapidly being built over, is subject to periodical inundation, and of late years it has been much more frequently flooded than on previous occasions. The place that I refer to lies 87 miles from the point of debouchure in the Estuary of the Humber, and is about 60 miles from the rise of the river. Nottingham lies, practically, half-way between the source and the point of outfall.

1199. Do these floods come every winter?

They come every winter, and in fact at all times of the year. The heaviest summer flood I have ever known, the heaviest, I believe, that has ever been recorded, took place in July 1875, at which time the whole of the southern part of the town was under water to the extent of from four to eight feet.

1200. The inhabitants were drowned out?

Drowned out completely. I have a photograph here, which probably would explain better than any description I could give you of it, the condition of the southern part of Nottingham in the height of summer, when thousands of acres of crops were destroyed, a large amount of cattle endangered, and immense damage done to the inhabitants in that quarter of the town (*producing a photograph*). The line across the picture exhibits the Midland Railway which enters the town from London at that point, and which was nearly under water.

1201. And where the water is in this photograph was houses?

Houses and building land. Referring to the same year, 1875, in October the largest flood took place which has ever been recorded under any circumstances, except one in 1793, which was higher, by a few inches, than the other in October 1875. I have taken and kept careful records of the height of the floods in the River Trent for the last 18 years, and I have also sought the best information I could get as to the previous floods, and from the most reliable sources I fix the flood of 1875, in October, about six inches beneath the great flood of 1793, and that flood certainly is the highest we have had any accurate gauges of. The flood of October 1875 is represented by this photograph (*producing another photograph*).

1202. Have you any knowledge of the amount of damnge that was done by these two floods in the year 1875?

I have not; it would be impossible to estimate it.

1203. You do not even know how much damage was done to the town of Nottingham?

It would be impossible to estimate it. The houses and factories (with their machinery in some cases) were flooded and injured, and subscriptions were raised for providing people with coal and fuel to dry their houses. The health committee of the corporation were exceedingly active, and of course a great amount of local charity was appropriated; but to estimate the amount of material damage would be almost impossible. The borough of Nottingham embraces a very small portion of the River Trent; the Trent only flows through the borough to the extent of about three quarters of a mile; therefore although the damage locally would be (though great) comparatively small, yet the damage collaterally through the Trent Valley for miles above and below the town would be enormous.

1204. How many inches of additional water are required to overflow the banks of the river at Nottingham?

The extreme range between low summer level and ordinary high flood level is 12 feet; the extreme range between low summer level and the highest flood level, that is the one of 1875, is about 13 ft. 9 in.

1205. At what point in height does it begin to leave its channel; how many feet are required to make the river leave its channel?

About seven or eight feet above the low summer level. I am speaking now of the level of the river at the Trent Bridge at Nottingham.

1206. Do you have frequent floods that reach that point?

Constantly we have.

1207. Every year?

Every year they at least equal that level, and more usually exceed it.

1208. Should

1208. Should you say that as often as every other year there was a flood overflowing the banks of the river.

Certainly.

1209. Have any attempts been made by the local authorities to stop these floods?

The corporation of Nottingham have done all in their power to reduce the influence of the floods within the borough, and their works have been worthy of record. In the first instance the corporation went to Parliament some years ago to take powers to require that the whole of the lands in the meadows subject to floods should be raised to a given level before they were built over; and I, as engineer to the corporation, was required under the Act to fix the level of what is termed high-flood mark. That was done; and since that period all houses, and every portion of the outbuildings of houses have been built above that level, and in consequence have been free from even the great flood of 1875.

1210. What level did you take?

I took a few inches above the level of the 13 feet 9 inches which I have already mentioned.

1211. But have there been any efforts to protect the land which is already subjected to floods, or the houses that are at present subjected to floods?

Many of them have been raised in level; many of the streets have also been raised in level to the height which is now understood to be the flood level.

1212. Has anything been done to raise the banks of the river?

Not to raise the banks of the river; but the corporation some years ago instructed me to report upon the condition of the old Trent bridge and the influence it had upon the flood waters. The old Trent bridge, a well known old structure, was built about 800 years ago, and it held up the water in the river we calculated to the extent of at least 18 inches, and of course in flood time that amount of height was material. I calculated that the removal of the bridge, and the erection of a new bridge, would probably have the effect of lowering the river to the extent of 16 or 18 inches; whereupon the corporation unanimously determined there and then to build a new bridge; the old one was removed and the new one opened between six and seven years ago. The effect of that has been to reduce the water level above the site of the old Trent bridge about 16 or 17 inches. The old bridge was of the mediæval character exhibited here in this photograph (*producing another photograph*), which also shows the amount of the holding up of the water; and this (*pointing to another photograph*) is the new bridge, which has had the effect of lowering it as I have said.

1213. But nothing has been done, either to raise the banks of the river or to excavate its bed, as I understand you?

After the construction of the new bridge the corporation instructed me to lower the bed of the river within the borough, which was done; the river was widened, the banks straightened and improved, and pitched with stone, and everything was done that could be done in the limited area of the river over which the corporation have any jurisdiction.

1214. Is it your opinion that all was done that could possibly be done?

By the corporation as the local authority.

1215. Could more be done by a body having a wider authority?

There is no doubt of that. The borough is shown on this plan (*pointing to a plan*) by the pink colour, and the River Trent by the blue line, by which you will observe how very small a distance the corporate district extends over the River Trent. This other plan (*pointing to another plan*) similarly exhibits the borough, and the blue patch exhibits the area flooded to the extent shown by the photograph on the occasion of the flood of 1875.

1216. Then anything that could be done by an authority having wider jurisdiction would, I presume, be done below Nottingham?

Below and above Nottingham.

1217. What could be done above Nottingham?

There are several works which in my opinion should be done by a local authority, or by some conservancy authority; and those consist mainly and generally

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generally of improving and lowering the bed of the river which is liable from time to time to be silted up by gravel and sand and other material washed from the hills of Derbyshire and the higher parts of the Trent, and brought down to the lower reaches of the river, especially in the neighbourhood of Nottingham, where the river is very liable to be from time to time more or less silted up, and the watercourse impeded; the general outflow of the stream would be also very much aided if the river were placed under a system of dredging and scouring and cleansing. That is, I think, a general work which should be imposed upon some properly constituted authority to carry out from time to time.

1218. You look to scouring of the bed of the river, not to raising its banks?

I look, in the first instance, to lowering the bed of the river by proper dredging arrangements and by proper excavation, and also to embanking the river at certain points for the protection of special localities. The River Trent runs through an immensely wide, rich, alluvial country for many miles, and then at some points it runs between ranges of hills and escarpments which are steep, stony, and more or less narrow; at these latter places no floods occur, but the water being held up by weirs and by obstructions of various kinds, it spreads out in the valleys, notably to the south of Nottingham, as described by the photographs, and higher up also in the river proper, and its tributaries, the Soar, and the Tame, and the Derwent, and in the other tributaries which form part of the great watershed of the Trent.

1219. What power of rating would you give to such a Conservancy Board; would you enable them to rate all the drainage valley in the district?

No doubt for general purposes, for general common works, and for the establishment charges attached to the proper conservancy of the river, the surveys, and generally what I may term the police surveillance of the river.

1220. Would you enable them to rate persons who never suffered from floods?

For those purposes I would rate the whole area.

1221. Whether they are interested or not?

They are interested, although not so directly as those who suffer from the overflow.

1222. Why are they interested?

Because they contribute directly to the flood waters in times of heavy rain; their water is passed over the watershed into the streams and rivers, and there got rid of; in that sense they are interested.

1123. But they are not interested in any precautions being taken?

Not in any precautions being taken; not directly.

1124. Would you rate the town of Nottingham, for instance, for that purpose?

For general purposes I would rate the town of Nottingham, also the towns of Newark, Birmingham, Wolverhampton, Leicester, and Derby, up to Cheshire, including North Staffordshire and the Potteries. The water of the whole of those towns, except Newark, passes down through Nottingham, and I think that the whole of the area and the inhabitants should be rated generally, for what I may term common establishment charges. With regard to all special works, such as for the protection of Burton-on-Trent, which is liable as much as Nottingham, even more so, to violent and destructive flooding, and also many other places, I would rate those specially according to the extent and area of land and property benefited and improved.

1225. And would you rate them simply in the ordinary fashion, an acreage rate, or according to the benefit received?

According to the benefit received from special undertakings.

1226. Where there was no benefit received, would you have no rate?

I presume there would be no works there. I would keep the special rate, of course, for special works, and for general works I would rate the whole of the district uniformly on the assessment for the poor rate, but for exceptional works of local import and for local purposes, I would rate such local area.

1227. Do you consider dredging an exceptional or a general work?
A general work; and the removal of weirs also.

1228. Duke of *Northumberland.*] What is the fall of the river below Nottingham?
The fall of the river from the low summer level at the Trent Bridge, which is a known established point, is 66 feet to mean sea level at Hull: what I may term the mean height or water level at that point, the mathematical mean of the river at that point, is about 69 feet above mean water level at Hull.

1229. How many miles is that from the outfall?
Eighty-seven.

1230. Nine inches a mile is the fall?
About nine inches a mile.

1231. Will dredging assist you very much in that case, the fall being only nine inches?
Dredging and widening the river at certain points combined. The effect of the immense amount of material which is washed down the river is the creation of shoals and banks in the Trent; I have known in the course of a week or two, after violent rainfall, immense banks of silt thrown up in the middle of the river, and appearing as islands in the centre of the stream. These have been dredged by the corporation so far as the Trent lies within their area.

1232. Lord *Somerton.*] Are you of opinion that these floods have become worse of late years, and more frequent?
They have been more frequent of late years; I think, if you take the average, they are not at all more excessive than they ever have been, but the agencies which are at work have magnified their local influences; that is to say, the neglected conditions of the rivers have intensified locally the effects of the floods. Then, again, in Nottingham, which I specially referred to, we have a difficulty which may apply, and I know, as a matter of fact, does apply to many other rivers, namely this, the navigation. The Trent Navigation Company have powers of navigation from Gainsborough, which is exactly 26 miles from the estuary of the Humber, up to a point 13 miles above Nottingham, called Shardlow. The length of the navigation is 73 miles. The Navigation Act was got in the year 1792, and the Company have powers of navigation, tollage, and a certain control over the river. Between the commencement and the end of the navigation, there are five weirs of the following heigths, 6½ feet, 4½ feet, 4½ feet, 8 feet, and 5 feet 6 inches, making a total of 28 feet 6 inches; each about 10 feet in depth, namely, at Sawley, Thrumpton, Beeston, Colwick, and Averham, near Newark. These were made for the purpose of keeping a greater head of water in the river to enable the Company to construct side cuts at certain places to avoid long bends in the river, and to maintain it on a level with the River Soar, Erewash, Nottingham, and Newark branch Navigations at their respective junctions with it. These weirs materially retard the flow of the water, and I have not the slightest hesitation in saying that they ought to be removed, or partially removed, by some authority. That would, no doubt, involve buying up the Navigation Company, and destroying their power altogether; and to do that would be a very great boon to the valley of the Trent, especially between Sawley and Newark.

1233. But suppose the weirs are gone, navigation would be impossible, I suppose?
Navigation would be almost impossible; but the navigation now is at a very low ebb; the railways appear to be gradually superseding it, and the Company is not able now to pay its proper amount of dividend.

1234. Lord *Meldrum.*] Does the navigation keep any check upon the railway in their rates?
I think the rates are the same, both by railway and by the navigation.

1235. Does it not keep a check on the railway in the rates charged?
Possibly it does.

1236. And that is a convenience to the public?
I have no doubt it does act in that way, especially for timber, and for coal, and similar heavy material.

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1237. Lord *Somerton.*] Do you think that the railway embankments and other works have aggravated these floods at all?

They have. The Midland Railway Company are making a new line now their short line to Saxby, to double their line from Nottingham to London, and they have to construct a bridge over the Trent, within the borough of Nottingham, and they are now constructing the bridge; the committee of the corporation intended to give, and, in fact, gave notice that they would oppose their Bill in Parliament, unless the Company gave some undertaking that they would construct a sufficient bridge, with proper water way. The Company agreed to submit their plans to me, as the engineer of the corporation, for my approval, which they subsequently did do; but on previous occasions bridges have been constructed, and embankments made, which distinctly hold up the water from point to point; and this is one of the works which I consider a local Conservancy Board, controlled by a central authority of appeal here, should have special power to deal with, with also the power to take down and widen existing bridges.

1238. Then you consider it is quite within the powers of engineering science to prevent any mischief being done by these railway works?

Quite so, *quâ* railway works.

1239. Duke of *Northumberland.*] Will you state the powers which the Navigation Company have?

They have power to make weirs, and to modify the banks of the river, and, in fact, to do all necessary works for the purposes of their navigation. The effect of those powers is this, that when the river becomes confined, and the bed of the river silted up by the floods and the gravel I have described, they construct what are termed sunk weirs, that is, weirs in the bed of the river to artificially hold up the summer water, to enable the navigation to proceed. The consequence is that by insensible and slow degrees, but by certain degrees, the whole bed of the river become raised, and the course of the water impeded. It is impossible to say precisely where it begins, but that is the effect of the navigation expediencies.

1240. That is the only body possessing powers over the river that you are acquainted with?

That I am acquainted with.

1241. Lord *Vernon.*] Have you personally examined into the causes of the flood above Nottingham, professionally; have you been to the higher water?

I have.

1242. How high?

Generally in Leicestershire and Staffordshire.

1243. You spoke of Burton just now; are you at all in a position to give an opinion as to the causes of the floods at Burton?

The causes of the floods at Burton are almost identical with those at Nottingham; the water is held up by a bridge, the Burton Bridge, and by a bridge below Burton, below the mouth of the River Dove, which joins the Trent, Willington Bridge. I examined the country at the time of the flood, in 1875, at Burton; I went specially for the purpose, and I made observations, which I recorded at the time, and which are identical almost with those that exist with us at Nottingham. The meadow lands are overflowed by the water, and the bridges are insufficient to pass the amount of water in high floods.

1244. You are speaking there of the county bridge?

Of the county bridge, Willington Bridge.

1245. Then you propose to put the county bridge under the jurisdiction of this Central Board?

Of the local authority, subject to the Central Board. I would place the banks, the weirs, and the bed of the stream, railway bridges and embankments, county and other public bridges, I would place the whole of those under the surveillance of the local authority, but I would protect the interests locally of the public bodies, the magistrates, corporations and owners of property, by requiring, when any removal of artificial structures became necessary, or where any important work became necessary to be executed, such as embankments, or anything else involving

involving or affecting local interests, such works to be done by Provisional Orders, such as those which are now commonly, in fact, almost uniformly, obtained for all local municipal operations.

1246. It amounts to this, that you would have the plan submitted in some way or other to some central authority?
Yes, to give the owners and those interested power to appeal and object.

1247. A noble Lord asked you whether railway embankments have any influence upon the floods, and I think you answered that rather by referring to the case of some bridge on the Midland Railway, near Nottingham; but it did not strike me that you entered fully into the question as to whether railway embankments generally were an obstruction to floods?
More or less they do in some cases obstruct the passage of the water.

1248. Take the railway now from Trent to Nottingham, do you think that that embankment has any influence upon the floods at Nottingham?
It certainly has a beneficial influence to some degree, because that railway runs coincidently with the stream of the Trent, and of course keeps the flood from the northern side of the embankment, and acts as a kind of flood bank to a certain extent, and protects the land on the northern side.

1249. If there are cases where the embankments has an injurious effect, in what way is there injury?
I can illustrate that better by referring to local embankments, such as those which exist across the meadows at Nottingham; there streets have been formed temporarily until the land becomes filled up solid for the purpose of building. These embankments hold up the water like a series of weirs. On the west side of Nottingham in almost every flood the water is nearly 3 feet or 4 feet higher than on the eastern side. The consequence is that floods in the western meadows and the western valleys are elevated very much above those to the east, where the water is obstructed by those transverse embankments; and of course every railway embankment similarly placed does to a certain extent produce the same effect.

1250. Viscount *Eversley.*] Your principal remedy is dredging the river, I think?
My principal remedy is dredging the river for the purpose of the ordinary passage of the water, and improving the power of the river to pass away flood-waters by removing obstructions in the form of weirs and bridges.

1251. We have had the evidence of a very eminent engineer who says that you may dredge any portion of a river, but you must take care what you are about, or you will have nature acting against you, and the river will very soon fill up those places which you have been dredging. The dredging would be almost incessant, would it not?
Dredging if properly carried out would not be so large an undertaking as might appear. The bed of the river at the present time is the effect of years and years of indifference.

1252. Lord *Penrhyn.*] Would not the dredging which you propose endanger the loosening the sands of the sides of the river, so as to bring down into the river again that soil?
The dredging would require to be accompanied at certain places by widening the river and improving the banks, and possibly by pitching the banks. But in speaking of dredging I did not so much mean to imply the lowering bodily of the river, as keeping the bed of the river to its natural level, free from the obstructions which have been from time to time washed into it.

1253. I think you said that the Corporation of Nottingham has deepened the bed of the river within its own area?
They have done so.

1254. And that below that again it has not been done?
It has not been done.

1255. Has not that had the effect of making at present a sort of long pond in the borough of Nottingham?
Yes.

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1256. And you require that the whole area of the watershed of that river should be placed under one Board for the purpose of carrying out the works throughout the whole?
Yes.

1257. And you require to rate that area by that Board?
Yes, as a general charge.

1258. And included in that area of taxation would be different towns, such as Nottingham and other large towns which you have named?
Yes.

1259. They would override all powers of existing Boards in regard to the drainage of the river in that area?
Entirely so; I would relieve all existing authorities of any control over the arterial line of the river, and also I would give the Board to be established powers to control all new works on the river, such as new cuts and new drainage outfalls, and everything that might injure the river in any way whatever, just as a corporation controls the connecting drains of private parties with the public sewers.

1260. Do you agree with that idea of taxing according to the return or benefit to be derived?
I do, for special works.

1261. Then your taxation must also include compensation for the abolition of navigation works and mill weirs, and various other things now existing on those rivers; you would have to tax, of course, the owners for the compensation as well as for the execution of the works?
Yes.

1262. Would not that be an enormous amount that you would have to compensate for?
I do not think it would. Of course the removal of the weirs in connection with the Trent navigation would destroy the navigation; but the whole value of that is only something like 40,000 *l.*

1263. Are there no mills in the river?
None upon the main stream, near Nottingham. There are numerous mills upon the tributaries.

1264. But those tributaries would all be within the area of taxation?
Yes.

1265. Then if you required those mill weirs to be pulled down, you would have to give compensation to the millowners in the upper part of the river?
Yes; and that is what the Corporation of Leicester is now doing upon the River Soar. I was concerned for the Corporation of Leicester in Parliament last year, when they took power to destroy certain mills on the Soar, which flows through the borough; that involved buying up the interests.

1266. But would you include merely landed property and houses in the taxation for the drainage for these purposes?
Land and houses I would rate as they are now rated for poor-rate purposes.

1267. But merely land and houses?
Merely land and houses.

1268. Would you rate railway companies for the benefit they derive from the abolition of the navigation to compete with them?
If the abolition of the navigation improved the railway traffic receipts, which I have no doubt it would, the railway company certainly should make a very handsome contribution towards the cost of the works. It would be a very difficult question to meet, I am afraid; I have not thought of the effect of the Trent navigation upon the railway companies.

1269. But as a principle in a general measure, I mean?
I think it would be only fair to require a contribution from such railway companies as derived benefit from the destruction of existing navigations.

1270. We have had evidence that it would be very desirable and practicable in rivers

rivers throughout the whole length of the rivers, speaking of some very much about the same extent as the Trent, to form a sort of high-level channel for flood water by an embankment by the side of the breakwater, leaving a space between the embankment and the bank of the river, and leaving that space open without any fences. Do you think that would be practicable for the Trent?

Such a scheme has been talked of by certain people in connection with the Trent; but I think it is totally unnecessary. I think the widening of the river, and the embanking of it from point to point, would answer all the purposes, and certainly save the purchase of a large area of land for the cut which you refer to; and there are times, for many months together, when such a channel would be perfectly useless, and possibly a nuisance.

1271. Therefore you do not recommend that?

I should not recommend that. I have thought of the matter from all points of view.

1272. Lord *Meldrum.*] As to the land inside these banks, according to the evidence of some engineers, it would be improved?

I spoke of the artificial channel.

1273. I do not think you quite understood the noble Lord's meaning. He did not mean to widen the channel of the river, but to put on the line of the river artificial banks, which would enclose an area which would carry off the water in time of flood. We have evidence from engineers that the meadow land inside would be improved by these banks.

I rather understood the noble Lord to suggest the construction of a parallel channel with the river to carry off flood waters, because that has been proposed in our neighbourhood. That I should certainly oppose; but the construction of banks along the margin of the river is precisely what I advocate for most districts. In fact, miles, and in the Trent Valley hundreds of square miles, might be practically reclaimed as it were by the formation of these banks; just the same as by the banks and dykes in Holland.

1274. Lord *Somerton.*] I understood you to say that you had made no attempts at Nottingham to guard yourselves against the effect of these floods by embanking as far as towns go?

We have no power to do so. As I have explained from the map, our borough upon the Trent is so exceedingly limited in length and size, that anything we might do would simply be of no value at all. The corporation had a hope to increase their power lately by extending the borough, which they are doing by a Bill which is passing the last stages in the House of Lords at this moment, this will give us a control over a much longer reach of the river, but even that is comparatively nothing compared with the extent required.

1275. Supposing you had power, speaking merely as an engineer, there would be no difficulty about that, I suppose?

None whatever.

1276. And you think it would answer its purpose?

Certainly; and, in fact, the efforts of the corporation in filling up the meadows, and requiring them to be raised according to a general plan, is another mode of constructing a bank; is making a solid elevated plateau of that which was a swamp.

1277. Earl *Stanhope.*] Is there not a very strong bore that runs up the River Trent; is it not the fact that the tide runs up the Trent very strong?

It is termed an aigar tide; a large volume of water which comes up three, or four, or five feet suddenly, that is at Boston, not in the River Trent. There is a tide that comes up, but not what is termed the bore.

1278. The cause of floods cannot be attributable so much to the water being held up by bridges, can it, as to excessive rain, or to this tide?

The tidal influence is a long way from us; it extends to a place called South Carlton, which is miles below us.

1279. The fact of the checking of the flow of the water away in times of

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flood, causes the water above to be spread out over the land; if the flow of water is checked, of course it causes flood above?

Certainly. And no doubt if an excessive flood were coincident in point of time with the high spring tide, it would affect us to a material extent.

1280. As regards that question which you have been asked, has the effect of warping the land ever been tried in the neighbourhood of Nottingham?

No, it has not.

1281. Do you think any advantage would arise from warping the low meadow land?

I believe in some few places it has been carried out, but not to any large extent.

1282. In Lincolnshire it has been tried to great advantage, and some land raised to the extent of seven or eight feet?

Nothing of the kind has ever been discussed in Nottingham that I am aware of.

1283. Lord *Winmarleigh.*] You said that you attributed the floods in the Trent very much to five weirs, and I think you said that those five weirs ought to be removed?

Removed, or lowered.

1284. Did you hear the evidence of the gentleman who preceded you on that point, that a weir may be allowed to remain, if you erected gates?

Certainly.

1285. Do you agree with him.

I do. That should be done, especially with two of the weirs which affect us mostly by having floodgates in the weirs, so as to anticipate a flood, and lower the water in the pond above.

1286. I presume it would be a serious increase of expense if those five weirs to which you allude, had to be removed?

No doubt of it; but the use of flood-gates or sluices in the weirs, or a means of letting out the water in anticipation of a flood, can only be carried out by a local authority having powers to deal with the waters. The Trent Company, or any other navigation company, would never permit a work of that kind to be done by landowners or existing local authorities.

1287. But would the construction of those gates, and the weirs to which you have alluded, itself be a very serious expense?

It would be a serious expense in a large river like the Trent, whose width at Nottingham is almost identical with the width of the Thames at Hampton.

1288. Can you give the Committee any idea of the damage done by that flood of 1875 in the area you speak of?

I could not.

1289. Can you give us any instance of damage that you are acquainted with?

I can give you an instance of what took place in the rivers in the basin of the Aire and Calder in November or October 1866, when Leeds and Wakefield and Huddersfield and Barnsley, and many of the manufacturing towns in the West Riding were under water 6 or 8 feet in depth, and where I know the estimate of damage amounted to nearly a million.

1290. Over what extent of country?

That flood I am well acquainted with, because I know the Aire and Calder basin well. I cannot give the area affected, but all the towns were affected from Leeds to Skipton, including Bradford, and from Todmorden down to Wakefield, including Halifax, Huddersfield, and Dewsbury. At Leeds and Wakefield there was water in the streets from 4 to 6 feet in depth, and very serious accidents took place; people and cattle were drowned, and boats were destroyed and sunk; in fact it was such a flood as has never been known in the history of that district.

1291. Are the floods in that district still injurious?

Yes, and the weirs in those rivers are somewhat in the same condition as those in the Trent; they materially tail up the water in the basins of the Aire and the Calder.

1292. I think you have stated that you cannot give the Committee any idea of the amount of injury done on the Trent?
I cannot.

1293. Nor in any district of the Trent?
Nor in any district of the Trent.

1294. As to Nottingham itself, you could not say what was the amount of damage done in the town of Nottingham by that flood?
Not measured by figures.

1295. It amounted to thousands of pounds, did it?
To many thousands of pounds in the town of Nottingham alone. In one of the public streets, during the height of the flood, seven people were accidentally drowned.

1296. Marquess of *Ripon.*] Did I understand you rightly, to propose that the Trent navigation should be abolished?
I think that the works required below Nottingham would involve the abolishment of the Trent navigation.

1297. And you stated (I have no doubt justly) that the railway company would derive considerable benefit from that abolition?
I have no doubt it would.

1298. But does not that show that the public would be likely to suffer from the removal of the competition which now exists between the navigation and the railway?
The public certainly would suffer, unless the railway companies contributed to the undertaking on some equitable scale corresponding with the benefit which they derived from the absence of competition; but the public would certainly suffer in the end, if the charge of freightage were raised.

1299. The public that would benefit would be a different public from the public that would suffer?
To some extent.

1300. The public who would suffer would be the carrying public, and the public benefited would be those affected by floods?
Yes.

1301. And the carrying public is one that you could not compensate?
You could not reach it to compensate it.

1302. Is the Trent navigation a real substantive navigation now?
Yes; from Gainsborough up to Shardlow the whole reach of their navigation is in full active work.

1303. I think there are other towns not in the valley of the Trent that benefit by it; Lincoln, for instance?
Yes; Lincoln, by means of the Lincoln navigation, which joins the Trent below Newark.

1304. *Chairman.*] Have you any knowledge of the state of the financial condition of the Trent Navigation Company?
I have. The condition is this: the capital of the company consists at the present moment of 520 50 *l.* shares, which amount to 26,000 *l.*; there is also a power to create additional shares to the extent of 13,000 *l.*, and also borrowing powers for 8,600 *l.*; making a total of 47,600 *l.*

1305. What is the dividend?
£. 7 per cent.; the power to create additional shares, and the borrowing powers, have not yet been exercised. And there is also a surplus fund invested in freehold property, obtained from the profits of previous years, to the extent of some 10,000 *l.* The Acts limit the dividends to 7 *l.* per cent. on the paid-up capital, and there is also a power to resort to the surplus fund in case the income in any year should be insufficient to pay the 7 *l.* per cent. dividend.

1306. What is the present amount of the surplus fund?
About 10,000 *l.* The entire working expenses, and outlay of every description in maintaining and improving the navigation, have been paid out of the income.

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income. The 7 *l.* per cent. dividend has been regularly paid until last year; but owing to the greatly increased expense incurred during the past few years through the damage occasioned by the extraordinary floods, 5 *l.* per cent. dividend only was paid last year, and is expected for some time in the future to be paid, unless the company resort to the powers they have of appropriating the reserved fund to make up the deficiency.

1307. In spite of this high dividend, the navigation is not so prosperous as formerly, is it?
By no means; the railway competition has materially reduced their traffic.

1308. Still, although it does so, has the Trent Navigation Company at all reduced its lock charges?
I do not think they have; the charges are very low; the maximum charge per ton, the tonnage charge the whole length of the river, does not exceed 1 *s.* 6 *d.*; and that is a very low rate.

The Witness is directed to withdraw.

MR. RICHARD LEE FURLEY, is called in; and Examined as follows:

Mr. *Furley.*

1309. *Chairman.*] YOU are acquainted with the Trent navigation, I believe?
I am.

1310. In what capacity?
As a carrier by water from Hull to Nottingham and Shardlow.

1311. You are the only carrier by water, I believe?
I believe I am the only one left, except odd boats belonging to different boatmen who own their own boats.

1312. There has been a very great decrease in the traffic?
An enormous decrease.

1313. That has been owing, I presume, to the competition of the railway?
Partly to the competition of the railway and partly to the inferior state in which the navigation is allowed to come.

1314. In what manner has the navigation deteriorated?
The depth of water has been allowed to decrease very much indeed.

1315. Is it the duty of the company to dredge?
The Trent Navigation Company are bound by their Act of Parliament, I believe, to keep up as much as 36 inches of water; but it frequently drops down as low as 20 inches between Hull and Nottingham.

1316. What remedy have you?
I am not aware that we have any.

1317. Are they not liable to some legal process to force them to perform their undertaking?
I am afraid there is no one powerful enough to put that process in motion against them; certainly I should not do it.

1318. And so long as they find so good a dividend as they do, they do not find it necessary to do it themselves, I suppose?
That seems to be the case.

1319. Then it must be your traffic alone that pays them 7 *l.* per cent.?
There is some little local traffic as well; for instance, between Nottingham and Newark, and the Derbyshire collieries and Newark, and also between Leicester and Nottingham.

1320. Do you think that you pay half the receipts of the company?
No, I do not think we do.

1321. Then

1321. Then you think that the main part of the receipts of the company come from this little local traffic?
Yes.

1322. And those people do not care about the height of the water?
Yes; but I have no analysis of the receipts.

1323. This local traffic hardly comes into competition with the railway, I suppose?
No, the local traffic is principally low-classed goods, such as gravel, coal, and manure, and traffic of that kind.

1324. But you cannot tell me at all the proportion which that traffic bears to your longer traffic?
I cannot, because I have never seen an analysis of the Trent Navigation Company's accounts.

1325. How many vessels have you on the water?
One steamboat trading up to Gainsborough, and six sailing vessels, and three boats navigating above Gainsborough, from Gainsborough to Shardlow and Nottingham.

1326. And with regard to this little local trade, is that mainly above Gainsborough, or below it?
Above Gainsborough, principally.

1327. Then, in fact, all the traffic above Gainsborough has practically passed into other hands?
Yes, practically.

1328. And that is not competed for?
No.

1329. Then, if the navigation were destroyed, there would be no evil effect upon the affairs of the railway, because they are not restrained by that now?
They are restrained by fear of competition by the Trent from Hull to Nottingham. There are some few boats belonging to private owners, who own a boat apiece, who work them themselves.

1330. Have you any idea how many?
I believe there are something like 20 that work from Hull to Nottingham in that way.

1331. Do you think that they have a material effect in keeping down the fares of the railway?
Certainly; they have a very material effect.

1332. What are the class of goods that you and they carry?
Principally grain and deals, timber and linseed, linseed cake, artificial manures; all low class goods.

1333. And down again?
Down again; the principal item now is gravel and pitch, and a little iron.

1334. Any earthenware?
The earthenware has long ceased to come by water, and the quantity of iron has very materially fallen off in consequence of the great delay from the want of water.

1335. Have you any great advantage in carrying grain?
Yes, we have a great advantage in carrying grain, because we save a great deal of terminal expenses. For instance, we go alongside the steamers in Hull, and the grain is shot loose on board, and we go alongside the places of delivery at Newark and Nottingham, and it is taken out without expense.

1336. Where are these impediments in the river, above Gainsborough or below it?
Above Gainsborough.

1337. Are they increasing?
Yes, I consider they are decidedly increasing, because they are not removed as they occur.

Mr. *Furley.*

14th May 1877.

1338. How much water do your boats draw?
A loaded boat will draw 42 inches.

1339. How do you get over the places where there are only 20 inches of water?
We are obliged to go half loaded. A boat that ought to take 45 tons up to Nottingham, in the summer time cannot get up with more than 20 tons.

1340. And each loss of an inch of water would be a loss of so much a load to your boat?
Yes.

1341. Have you any idea how fast the depth is decreasing?
I cannot tell you.

1342. You do not know in how many years you will be driven off the water altogether?
I cannot tell you.

1343. Have you made any efforts to induce the company to perform their duty?
Yes, efforts have been made by the people at Nottingham. I myself have not made any efforts, because I considered it useless.

1344. But have you brought to their attention the fact that there are these bars?
That has been done by the Nottingham people, not by us.

1345. How many bars are there?
I do not know. There are several shoals that occur, and particularly after floods.

1346. Then they gradually wear down afterwards.
They wear down, I believe, in time.

1347. Lord *Somerton.*] But they silt up after a flood?
The flood brings the sand and gravel down, and lays it up in certain places.

1348. In the same places, generally?
Principally in the same place; it is according to the configuration of the river.

1349. *Chairman.*] Do you know at all how much money the company spend upon the river yearly?
I do not know. I am not a shareholder, and therefore do not see their accounts.

1350. You have never inquired into that matter?
I have not.

1351. Do you think that the weirs have any great effect in injuring the bed of the river?
No, I do not think they have, and I think that the navigation of the river could be very greatly improved by putting in more weirs, and deepening the existing channel.

1352. If more weirs were put in, would there not be an increase in the floods?
I do not see why there should be if the weirs were made slantwise across the river, and long enough.

1353. It is not your impression that the present weirs aggravate the floods?
I should not think they do.

1354. Does your navigation suffer much from the flood while it is going on?
Generally we are stopped altogether. In October and November 1875 we were stopped for five weeks, and could not stir at all.

1355. The stream was too strong, was it?
The towing-paths were under water; and this last winter we were stopped nearly a month from the same cause.

1356. That

Mr. *Furley.*
14th May 1877.

1356. That would not affect your steamer?
No; that only works up to Gainsborough; but if the river were deepened and made navigable up to Nottingham for vessels of her class, the carriage from Hull to Nottingham, I consider, could be done for very little more than half the present rates.

1357. Duke of *Northumberland.*] Supposing the weirs were made to open, as one of the witnesses has described, would that be of any advantage to your navigation, do you think?
Certainly it would be. One great advantage to our navigation would be, if it could be done, the storage of some portion of the water in the winter, and sending it down the river in the summer when the river is too low; but I imagine that would cause too great an outlay to be entertained.

1358. Earl *Cowper.*] With regard to the competition, I think you say that the fares of the railroad are kept down by it?
Yes, undoubtedly.

1359. Even though you have so few boats?
Yes.

1360. I suppose that if they raised their fares more boats would be immediately put on?
Undoubtedly they would if the navigation allowed of it.

1361. Who does the navigation belong to?
To the Trent Navigation Company; it is a very old company, I believe, nearly 100 years old.

1362. Are there not private rights in the navigation?
No, certainly not; I never heard of any.

1363. Marquess of *Ripon.*] Do the Navigation Company keep up the banks?
Yes, I believe so.

1364. They have the responsibility of keeping them up?
They have.

1365. Do they keep them in an efficient state of repair?
I believe they do; they have raised them latterly.

1366. *Chairman.*] They depend entirely upon their own capital; they have no rating powers?
No rating powers that I am aware of.

1367. And all their receipts depend upon what they get at the locks?
The tonnage rates.

The Witness is directed to withdraw.

Mr. JOE CHILD, is called in; and Examined, as follows:

Mr. *Child.*

1368. *Chairman.*] You are Engineer, I think, to the Lee Conservancy Board?
I am.

1369. The river is not very liable to floods, is it?
Yes, it is subject to floods, but not to any serious extent; that is, to floods that cause any serious damage.

1370. Do the floods impede the navigation?
Not a great deal; they do sometimes for a couple or three days, but that is about the extent of it.

1371. Do they do any damage to the neighbouring land or houses?
No; I think there are no houses that are flooded. The lands that are flooded are principally marsh and pasture lands, and do not take any harm.

Mr. *Child.*

14th May 1877.

1372. You do not find that the land gets harm if left under water for some days?
No, it does not remain long enough under water, unless in the summer time, when the crops are ready for cutting, and then it does considerable damage, but this seldom occurs.

1373. Did that happen in 1872 or 1875?
In 1874 there was a flood came in the summer and did considerable damage; but the principal floods are in the winter time.

1374. Are there any works that you have had to adopt for the purpose of preventing or mitigating floods?
In the navigable portion of the river, where the main channel runs, we have little or no flooding, the floods principally occur in the back rivers, which are really not under anyone's jurisdiction.

1375. You take no cognizance of any part above the navigable part?
No; we have some powers, but they are not very clearly defined. There is a great deal of silting up in that portion, and that is the principal reason of the flooding.

1376. You mean that the water gets stored?
It gets impeded in its course, and the channel of the river is very circuitous, and it gets silted up into shoals, and the water does not get down the valley as quick as it should do.

1377. That may cause a flood in the upper land, but it does not cause one in the lower, does it?
It applies all over the river; wherever the flood waters take the old course of the river, the adjoining lands are subject to floods, but where they are confined to the navigation proper, that is, the barge river, we pass them down without their getting over the banks.

1378. I suppose you spend a good deal of money in keeping the navigation river clear?
About 6,000 *l.* to 7,000 *l.* a year.

1379. In dredging?
In dredging and other works, and repairs of existing works; that is, exclusively in repairs; not in new works.

1380. Have you had any serious floods where the river falls into the Thames?
Down in the Hackney Marshes it is very subject to floods; but in that case they do no serious harm; it is merely the marsh-land that is flooded.

1381. Would they not affect the dwelling-houses?
There are no dwelling-houses, with the exception of one or two, to be affected.

1382. Has the railway aggravated the floods at all there?
No, I do not think it has.

1383. Are there any powers which you think you ought to possess for dealing with obstructions?
There are powers which we might have for the proper supervision of the back streams.

1384. You mean the non-navigable portion of the river?
The non-navigable portion of the river.

1385. I do not understand how that hurts you?
It does not hurt us; we do not suffer much from that, with the exception that we do not get the floods down so quick as we might do.

1386. But it hurts the adjoining owners?
It hurts the adjoining owners.

1387. And you think if you had powers over those obstructions you might save the adjoining owners?
I think we might pass the floods down much quicker.

1388. What species of obstruction do you speak of?

A silting

A silting up in the bed of the river, and contracted watercourse, and some very awkward bends that each year are getting worse.

1389. You would have to lay out a considerable sum of money to do that?
It would require some outlay; not very considerable.

1390. And it would require to be paid for out of rates paid by the parties benefited?
Yes.

1391. Have you ever ascertained that the parties who would be benefited wish to have the benefit at that price?
No.

1392. Have you ever heard that they have expressed any wish of that sort?
No.

1393. Or that they complained that the flood was a serious damage?
No; I think the effect of the floods have not been serious, except in some occasional instances in summer time.

1394. Then on the whole it would be well to let well alone?
I think on the Lee Valley some little improvement might be effected. But it is a question whether any great outlay would be remunerative. In the upper portion of the Lee proper, between Wheathampstead and Luton, there is a good deal of land that might be benefited by a little straightening of the stream. I should think there are 50 or 100 yards on each side of the stream where the land is a complete bog; this might be very easily improved by a little straightening and cleaning out of the channel of the river.

1395. How many acres do you think would be affected by that?
I should think in the district I have named between Wheathampstead and Luton, 200 acres.

1396. Duke of *Northumberland.*] Have you any weirs on the Lee?
Very many.

1397. Have they any influence in damaging the land immediately adjacent?
No; it is by the improvement in the weirs that we are now enabled to pass the floods down so much better. The old weirs were constructed of wood, and presented a great obstruction to the flow of water. In a weir of 50 feet in width there would be seven upright posts, each about 18 inches in width; that would be about 10 ft. 6 in. of the available waterway stopped up. Now we have put up iron supports only about five inches in width.

1398. Do not these weirs, whether new or old, have a tendency to back the water up on the adjoining land?
No, because they are constructed with lifting gates. When the gauges show that the floods are rising the men raise the gates; and when the whole of the gates are lifted the river has its free course.

1399. Supposing that course were adopted on other rivers on which the system of weirs is much complained of, would that in your opinion be a remedy for the evil?
I think a very great remedy, particularly up the Thames. Most of the weirs on the Thames and on the northern rivers, where my experience has been, are structures of stone; in fact, forming nothing but a complete bank across the bed of the river; there is no means of lowering the weir to meet the increased volume of water in flood times, and consequently it tops the bank immediately.

1400. Do you believe that system to be adapted to the larger rivers as well as the small ones?
To a great extent.

The Witness is directed to withdraw.

Mr. GEORGE CORBLE, is called in; and Examined, as follows:

Mr. *Corble.* 14th May 1877.

1401. *Chairman.*] You have been Clerk to the Lee Conservancy Board, I think, ever since it was instituted?
I have.

1402. In 1868?
The Board commenced its functions in 1869, and within a very short time after that I was appointed clerk?

1403. What was the object of the passing of the new Act?
It was to constitute a more efficient body for the government of the River Lee, and to embrace the jurisdiction over the whole of its tributaries, more especially for the prevention of pollution purposes, and for the government of the navigation. It was thought that the old body of trustees was too large for practical purposes. The Rivers Pollution Commissioners instituted a special inquiry into the River Lee, and upon their report it was resolved by the Board of Trade to bring in a Bill; it was resolved that a working body of 13 conservators should be constituted for general management of the navigation and to prevent pollution.

1404. You have not much to do with floods, I suppose?
Not a great deal, except these occasional floods. But I notice in the earlier days, that is to say, about the time of Henry the Sixth, as far back as that, the Lord Chancellor then used to issue Commissions, appointing certain Commissioners, who had jurisdiction over the old River Lee; and their inquiries, which are reported in certain deeds of sewers as they called them, really go to a power which the present Board does not now possess, to the removal of obstructions in the river that then caused floods over the adjoining lands.

1405. What was the nature of the obstructions?
Obstructions by hills in the river, and weirs and stanks, and kiddles, as they called them.

1406. They also had another power, which you do not yet possess, that of rating the neighbouring proprietors?
They had; but this power lapsed at the time of the Act of the 13th of Elizabeth, which incorporated the first trustees of the River Lee.

1407. You have no power whatever of raising money except by charges at your locks, have you?
That is whence the income of the Conservancy is derived, with the addition of some fixed water rents received from the water companies under Act of Parliament.

1408. And those are the only funds you possess for the purpose of exercising your duty as pollution authorities?
Those funds are applied to navigation purposes solely. Parliament provided that the water companies should contribute a maximum sum of 1,000 *l.* for the prevention of pollution.

1409. Is that 1,000 *l.* a year all that you have for the prevention of pollution?
That is all. I may add that it is insufficient to meet the expenses; that is, the general expenses, and of prosecutions and legal proceedings that we have to institute.

1410. Have you had a good deal of litigation?
We have at times; and I am sorry to say, to some extent, most unsuccessful. But now a most important change has been effected by the Rivers Pollution Act of 1876, under a section of which the Conservancy Board can take proceedings before the county court for offences under the Conservancy Act; but that Act has not yet been put into operation, as it does not come into force, I believe, till next August.

1411. But

1411. But you have no power under that Act of raising money in any other way?
None whatever.

1412. Is there any other body that has any authority over the Lee basin except yourselves?
None other, excepting in the lower portions of the river; that is, more towards the tidal portions, where the Essex Sewers Commissioners have a sort of coincident jurisdiction with the Lee Conservancy Board; but their duties are particularly in regard to drainage, and prevention of floods in the district.

1413. Are you both empowered by law to repair the same sea-walls?
No; the coincidence of jurisdiction is more as to those narrow back streams; although they have a special jurisdiction as regards the construction and maintenance of the sea-walls, the Lee Conservancy Board have a jurisdiction to see that the stream-way is not obstructed in any way; to prevent any person building a buttress wall, or a wharf, jutting into the stream.

1414. Then they would have the power of building a wall, and you would have the power of knocking it down?
If it obstructed the water-way.

1415. But there is no machinery provided for determining which of you is right?
No; but I may say that that conflict has never yet arisen, because the object of both parties is the same.

1416. That is due to the good sense of the parties rather than to the perfection of the law?
Precisely. I might add that, in the Report of the Rivers Pollution Commissioners in 1867, and likewise in the Report of the Committee on the East London Water Bills of 1867, it was recommended that the new proposed Lee Conservancy Board should have powers to carry out works of arterial drainage, and for the prevention of floods, but for some reason or other that power was not included in the Lee Conservancy Act.

1417. However, floods are not a very serious matter in the district over which you have control?
No.

1418. Earl *Stanhope.*] With regard to the Rivers Pollution Act, how does it affect the River Lee?
In this way; it gives additional powers to the Lee Conservancy Board, that they can proceed either under their own Act or under the Rivers Pollution Act; it gives them really two courts to go before, one under the new Act, the county court, and the magistrates under the old Act.

1419. The drainage of London at Barking is not connected with the River Lee, is it?
Not at all.

1420. Does your Board of Conservators seek for further powers now before this Committee?
There might be some improved powers with regard to giving us jurisdiction over some of the back streams, where there is no proper jurisdiction at all; it would assist in passing the waters down.

1421. Could you tell us, very shortly, what improvements you think you might have, because you must remember that of course there is already a large and influential body of Conservators for the Thames, and that you are a mere tributary of that river; what improvement would you suggest?
Only those with regard to the back streams, and they would be mere local improvements, which our Conservancy Board might direct the local authorities to remedy.

1422. What streams do you refer to?
The old back streams which join the River Lee; also the tributaries.

Mr. *Corble.*
14th May 1877.

1423. Do you know their names?
There are several tributaries; the Ash, the Beane, the Mimram, and the Rib, the Stort, and the old navigation of the River Lee, which has now been diverted.

1424. That would increase your rateable area?
It would, but it would have to be kept distinct from all navigation purposes.

1425. But your powers are more than navigation purposes; have you not power to make embankments, and to dredge, and all that?
Only as affects the navigation, but not in the other streams.

1426. Earl *Cowper.*] With regard to what you said about pollution, you say that you have means of raising about 1,000 *l.* a year for the prevention of pollution?
That is the amount fixed by Act of Parliament as payable by the water companies to the Conservancy Board.

1427. What expenses have you to pay in this respect?
We pay the expenses of the staff for superintending the department, the sanitary engineer, clerk, water-bailiff, legal, and all the expenses incidental to carrying out the protection of water clauses in the Act of Parliament.

1428. Is it not true that every owner is obliged by the Act to see that his sewage matter does not go into the Lee?
After notice from the Lee Conservancy Board; we have to make inquiries and report; and all that entails expense.

1429. The owner has to do all this entirely at his own expense?
Unless he be in a town, or within the jurisdiction of some sanitary authority who are carrying out main drainage works; then of course he makes his connections (I believe that is the law) with the main drain; but the local authority would construct the main drain in the first instance.

1430. But none of those expenses fall on the Conservancy Board?
No.

1431. You have no expenses except providing the staff for the purpose of inspection and legal proceedings?
Exactly.

1432. And this costs you 1,000 *l.* a year?
£. 1,000 a year is all the amount allowed by Parliament.

1433. Earl *Stanhope.*] It does not come up to a thousand a year, does it?
We are obliged to make an estimate, and the water companies cut that estimate down to the lowest possible amount.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Thursday next, at Twelve o'clock.

Die Jovis, 17° *Maii*, 1877.

PRESENT:

Lord President.	Viscount Eversley.
Duke of Bedford.	Lord Monson.
Duke of Northumberland.	Lord Vernon.
Marquess of Ripon.	Lord Stewart of Garlies.
Earl of Sandwich.	Lord Penrhyn.
Earl Cowper.	Lord Somerton.
Earl Stanhope.	Lord Winmarleigh.

The LORD PRESIDENT, in the Chair.

Mr. JOHN LLOYD, is called in; and Examined, as follows:

Mr. *Lloyd*.
17th May 1877.

1434. *Chairman.*] You reside at Huntington Court, Herefordshire?
Yes; and I am a magistrate for Breconshire.

1435. How long have you lived in that county?
Twelve years.

1436. Are you well acquainted with the River Wye?
Yes, I have given it great attention, and I know the district generally.

1437. And you are well acquainted, I believe, with all the legislation that has taken place with regard to the Wye?
Yes, there have been four Acts of Parliament passed relating to the navigation of the Rivers Wye and Lug, from the time of Sir William Sandys, in 1661, down to 1809.

1438. I do not know that it is necessary that we should go into all the past legislation; what are the Acts under which the Wye is now regulated?
The first would be the General Act, the 7th and 8th of William the Third, passed in 1695, chapter 14, which superseded Sandys's Act of 1661; and there was an amendment of it in 1727, the 13th George the First, chapter 34.

1439. Under the early Acts, were there trustees appointed?
I should say there was a fourth Act passed, which was to form a private towing-path company; and that Act does not change the Navigation of the Wye and Lug, which rests on the General Act of William the Third and the amendment of George the First. The river before was navigated by barges hauled by men, and a private towing-path company was formed in 1809, a horse towing-path company, which was a private body. The Trustees who have charge of the Rivers Wye and Lug are those appointed or nominated by the Acts of 1695 and 1727. By the first Act they were limited to 21 in number, and by the second Act they were increased to 120 in number.

1440. At the present time, in whom is the management of the Rivers Wye and Lug vested?
Practically, in nobody whatever. There are four *ex-officio* trustees: the mayor of Hereford, the mayor of Leominster, the vicar of Leominster, and the mayor

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of Monmouth; and those four have never acted; and I do not suppose there has been a meeting called for 50 years past.

1441. Then practically the Act you have alluded to as setting up a towing-path for horses did away with the former Trustees, who had been appointed under the earlier Act?

Yes, apparently, when the towing-path company was formed the Trustees gave their consent to the formation of the towing-path company, and then they, as it were, allowed themselves to be practically superseded.

1442. Did the Towing-path Act recognise the existence of the trustees?

Yes; it states that with their consent they were allowed to make use of the river and form a towing-path.

1443. Then they quietly allowed the towing-path company to do what they had been previously empowered to do?

Yes; still the responsibility remained with them, because the river was still allowed to be navigable by boats, if they were not hauled by horses. The only powers that were given to the towing-path company were to form a towing-path, and to charge tolls for hauling with horses.

1444. Then practically their powers exist still?

Yes, both powers exist still; the powers of the towing-path company have never been dissolved under any Act of Parliament, nor have the trustees; and the other Acts, the Navigation Acts, are as much in force to day as they were the day they passed.

1445. But when the railway was opened from Hereford to Gloucester, the towing-path company was dissolved, was it not?

I cannot quite tell you the arrangements, but the clerk was discharged, and they dissolved themselves; it was done by no formal process, but they found it no longer paid to keep up the establishment.

1446. Had the original Trustees any duties imposed upon them under the Act of Parliament?

Yes, they had very large powers given them to purchase all the weirs upon the river, and they did buy up very largely the weirs on the Wye, and threw the Wye open.

1447. Lord *Penrhyn.*] Have you the Act which formed this towing-path company?

Yes (*handing it in*). That company had no power to buy weirs, only to make a towing-path, and charge tolls for horses.

1448. *Chairman.*] The Trustees never did anything up to the time of the passing of the Towing-path Act, did they?

If you mean the Navigation Trustees, they did a great deal; they spent nearly 18,000 *l.* in pulling down and purchasing the weirs upon the Wye, and in removing shoals and dredging out the streams.

1449. Then their powers exist now just as they did the day when the Act was passed?

Yes, that would be so if the trustees existed; but they have no power to raise money now. They had power then to raise money for five years; 4,526 *l.* a year in the county of Hereford for four years up to the year 1700, and then their power to raise money ceased.

1450. Then they were still charged with the maintenance of the river and keeping up the navigation, but without any power enabling them to do so?

Yes; it was supposed to have been done once for all, and that there was no use of a continuing charge.

1451. It was thought when once the river was put into proper order there was no need of anything further?

Yes, I presume it was done in that way.

1452. In what state is the River Wye with regard to floods?

The floods in the Wye are occasionally very high, and cover the lowlands, but they are not so destructive, I think, as perhaps to call for any strong remedial measures.

measures. They occasionally cover the lowlands in hay-time, and especially after falls of snow, melting of snow, and they flood some parts of the towns; but I am not aware of anything that could be done to improve the matter there.

1453. How are these Commissioners appointed; have they any particular qualifications?

Under that Act there are Trustees, and there are two sorts of Commissioners. There were Commissioners to see that the money was properly expended, and there were Commissioners to provide the money, and there were Trustees besides those to supervise the navigation; so I do not quite understand what your Grace means by the word Commissioners.

1454. I suppose it would include all those?

The money was raised like a war tax. It is stated in the Act that it is to be raised by the same Commissioners who levied the war tax in the county of Hereford.

1455. Does the navigation in the Wye require any money laid out upon it now?

No, the navigation in the Wye has ceased, you may say. It is still a great navigable river of England, but the navigation has nearly ceased; it is confined to pleasure boats and occasional rafts of timber. Up to three or four years ago there was a considerable trade to Monmouth, on the lower part of the Wye, but that has ceased now, almost entirely, I may say entirely, so that practically there is no navigation; still the people all regard it as a navigable river, and would not consent to have it done away with as a navigable river of England.

1456. Has the opening of railways put a stop to the navigation?

Yes, the course of the Wye is a tortuous one, and it is very high in winter, and low in summer, and altogether it is an expensive mode of conveyance, and the railways beat it entirely out of the field; there is neither certainty nor cheapness in it.

1457. But I understood you that there are periodical floods?

Yes, very high. Monmouth suffers a great deal, Hereford does not, Ross suffers; but you must take some things of the kind as unavoidable, perhaps, in the case of the Wye.

1458. Do the railways suffer at all?

Yes, the railway at Monmouth suffers, and down the course of the Wye; but there is nothing to be done there in the way of improved drainage that I can see or recommend at all.

1459. And would the same remarks apply to the Lug?

No; the case of the Lug is one that I think the Committee should a little dwell upon.

1460. But we will confine ourselves for the moment to the Wye; so far as the Wye is concerned, you think that there is no need of any further legislation; is that so?

I think it would be satisfactory if it was placed under somebody's care, as it were, as these Trustees have ceased, and there is occasional need for the interference of somebody to see to things that should be done, either in connection with maintaining the water-way, or maintaining it navigable. Occasionally people complain of encroachments on the right of navigation. There seems to be nobody in charge; it is like a thing in existence without anybody to take care of it.

1461. Then how would you propose to deal with it?

That is a question which the Committee must decide after hearing a good deal of evidence. I should be inclined to form a Conservancy Board for the whole of the catchment basin of the river, if it is found to be generally advisable for all rivers.

1462. The catchment basin of the Wye or the Lug, do you mean?

The case of the Lug is much stronger than the Wye as regards floods. You might either limit it to the Lug catchment basin or extend it to the whole catchment basin of the Wye, of which the Lug is a part. If evidence was

Mr. *Lloyd.*
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brought before the Committee, generally recommending a Conservancy Board being formed for the whole of the catchment basin, I should be inclined to vote for that. I advance my views, however, with great diffidence on that point, it is a large question.

1463. The floods are serious on the Lug, as I understand you?
Yes, they are very serious on the Lug; they are both injurious to the health of the district, and to property and to the traffic of the district; the roads are blocked up for sometimes nine weeks together. I do not know whether the Committee have travelled by the Shrewsbury and Hereford line, but for miles and miles the basin of the valley is nothing but as a sea of water, with the rails sometimes above, and in one place below the surface of it, and the flood rolls over a vast extent of land.

1464. Covering the railway, it would rather interfere, would it not, with the permanent way?
I have corresponded with the engineer of the line, and I was hoping to have got something to state from him here to-day. It is well known that they have constant expense in watching the railway. Perhaps the Committee might think the railway could take care of itself; and to me it seems not so much the question as it is a question of lands and roads.

1465. What sort of area now would be under flood?
I think, perhaps, if I stated 10,000 acres, that would be rather an outside estimate; 8,000 acres would be about the mark of flooded ground.

1466. Would that be annually?
For six weeks together, perhaps.

1467. But every year?
Yes, every year, pretty nearly; of course seasons vary very much.

1468. Lord *Penrhyn.*] Do you mean 10,000 acres over the whole catchment area?
No; I am speaking now of a certain district to which my evidence particularly applies, near the outfall of the Lug into the Wye.

1469. That would not give an estimate, therefore, of the total acreage subject to floods in the basin?
No; from Dinmore Station to the mouth of the Lug. I should say certainly 8,000 acres.

1470. Lord *Winmarleigh.*] What is the distance?
About 14 miles. And I wish to call the attention of the Committee to this, that in that space there are two mills; one has a fall of eight feet, and the other has a fall of six feet six inches; at each of these mills there are now the remains of the navigation locks, and up to within 20 years ago boats passed through these locks. At the present moment they are in a state of decay; but I am inclined to think this, that when those locks were made, as it is almost certain they were made by the navigation authorities, in order to gain a level higher up the river the weirs across the river were at the same time heightened. It would be done to give an increased height to the lock; and the navigation in these instances has, I am pretty well certain, assisted to prevent the proper drainage of the valley.

1471. Do those locks form any great impediment now?
They form no more impediment than the weirs do, only that I think they have caused an increase to the height of the weirs.

1472. Is the weir any longer necessary?
The farmers in the neighbourhood have been for years trying to do something in the matter, and there are divided opinions; and there are other reasons which I will state to you why nothing has been done from time to time. These mills and locks and weirs still block up the valley and the drainage of the valley, and are admitted by all to cause a great deal of the damage that is done there; and the persons who have tried to improve the drainage there under Mr. Clive's Act of 1861, have found themselves for years, and find themselves now, beaten by the difficulties of the position. I happen to have sketches of these which the Committee

Committee might look at (*producing two sketches*). Here is one sketch which shows gates across the river which are raised up. The weir is a movable weir, and the gates are raised up as the water comes down, but the miller is allowed to pond it to the height of eight feet. The other sketch shows the old navigation lock, the old lock fallen to pieces.

1473. *Chairman.*] How should you propose to deal with these mills?

May I first point out one difficulty in dealing with them. It is that this flat land on the side of the lock was formerly, a great deal of it, common fields, which has been inclosed under an Inclosure Act of 1809, and is allotted out in a very curious way. The persons who had right of common were given pieces of the land for mowing, small strips of an acre, and half an acre, and so on. There are no fences; it is divided by boundary stones, and creates a large number of owners, and makes it very difficult for anyone to work out any scheme. In fact, what has to be done, is to buy up the mills, and straighten the course of the river. (*The Witness produces a plan, and describes it.*)

1474. What would you propose, but which you would find it difficult to carry out?

To buy up the rights of these corn-mills and straighten the course of the river. The farmers think it very questionable whether it is for their advantage or not that the land should be made drier; that the mills should be bought.

1475. But if the mills were bought and the river straightened, and by that means the water prevented from going over those pasture lands, would not that rather interfere with the crops that have been raised upon them?

Yes, that is what they fear. But it is quite hopeless to expect to prevent these floods getting over the land altogether. They are rather afraid that those who propose to buy up the mills and drain the valley will drain it so that there will be no floods at all; but that is a great mistake; the catchment basin of the Lug is so large that they can never stop the floods altogether.

1476. That is one of the difficulties, that the farmers are afraid if the river was straightened they would not get such good crops of hay?

Yes.

1477. Earl of *Sandwich.*] Have you had any county meetings on the subject?

No; there has been a great deal of correspondence on the subject, and the Lord Lieutenant was asked to take it up, but there has been no county meeting held.

1478. And the district does not complain?

Yes, I think the district does complain, but not to that extent to call a public meeting.

1479. Lord *Penrhyn.*] What is the distance between the outfall of the Lug into the Wye and the outfall of the Wye?

Sixty miles.

1480. Duke of *Bedford.*] Where does it fall into the Wye?

About six miles by river below Hereford; and the Wye itself, the main river, when flooded, backs up the tributary, and throws the water back three or four miles.

1481. *Chairman.*] Are there any floods in summer in the Lug?

Yes, in hay harvest times occasionally. The one in 1875 was very destructive.

1482. Then that flood would carry away the hay?

Yes, it did; the farmers left their waggons in the field, some half loaded, and some empty, and great damage was done.

1483. Would they not have preferred to have had the land drained, and not lost their crop?

But they are difficult to reason with and convince sometimes. I have a letter from Sir Herbert Croft, who says he considers the mills should be bought and taken away; that the water remaining stagnant on the fields so long is prejudicial to health.

 1484. What

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1484. What sort of crops do they get after the floods have been over the land?
It is some of the best land in the county.

1485. What is the state of the land when the flood has been over it for some time?
It looks very bad this year; it was so long under water, seven or eight weeks, and with the east winds coming in the spring, it looks in a very miserable state, much worse than my own meadows, which are dry. As a rule, in dry summers the meadows lying low, and nourished by the flood water, grow very good crops.

1486. What is the value of the land per acre?
It varies; 3 *l.*, I should think, an acre. I have a letter from one gentleman who says his land is only worth 1 *l.* an acre; that land would be particularly prejudiced by these mills, not simply flooded land. Some land is so prejudiced by these mills that it grows rushes.

1487. What is the average price valued at?
Say 50 *s.*; it would certainly be worth that money.

1488. Over the 8,000 acres, do you mean?
I think 50 *s.* would be perhaps the average of a large class of it, and then, I think, you would put the rest at 1 *l.*

1489. Lord *Monson.*] Have you two hay crops a year?
No, only one. They turn in on the 26th of July, and then these large fields are all common to the whole of the district.

1490. *Chairman.*] Then you propose to buy these locks, and weirs, and mills, and straighten the river, so as to prevent floods; that, you think, would be a remedy?
Yes, I should do that; I have thought it over very carefully, and my opinion is that it ought to be done.

1491. Having formed that opinion as to what ought to have been done, then have you formed an opinion as to how it ought to be done; by what process?
Yes.

1492. How would you amend the law?
One suggestion was made to me, that there is no power under Clive's Act of arranging the payments according to the proportion of benefit done or supposed to be done by the Act.

1493. First of all, you must get the body that are to do it; what body would you set up to do it, to make these improvements?
First of all, I will say whom I would not set up. I think that the bodies to be formed under the present Act could not be formed in this instance; therefore you could not have them.

1494. You mean you could not have the existing trustees?
I am speaking of the drainage; you are speaking of the general body of the whole river now, as I understand.

1495. No; I want to know what body you would set up to deal with these floods?
A Conservancy Board, certainly.

1496. How would you form a Conservancy Board?
That is a matter for the Committee to consider after taking the evidence; my opinion is in favour of a Conservancy Board being formed for the whole district.

1497. For the whole catchment basin of the Wye and the Lug?
Yes. It would meet with great opposition, and it is a matter that should be well considered. The expense of it, however, would be such a slight matter; the case would be just like where we pay for various things that we do not see the benefit of at once. The whole basin, taken together, indirectly would all benefit; perhaps some portion would benefit more than another, but indirectly all would benefit.

1498. But

1498. But you have formed some opinion, have you not, as to whom you would put upon this Board, by whom they would be elected?

Yes, you must certainly make it representative by rateable value, and not in any way by property qualification, and you must take the authorities that are in existence in that basin, who more or less represent the rateable value, and form your council from them. It seems to me that the boards of guardians should have a voice in the matter, and the courts of quarter sessions, and the cities or boroughs which are within the district. From those three, I think, you should form it.

1499. Then having formed your board, such as you describe them, what powers do you think it would be necessary to give them; would you put the navigation under them?

In this instance, I would; I have not knowledge enough of every district of England to speak generally upon the point.

1500. I am only confining you now to the Wye and the Lug?

Yes, I should put it generally under them, in our own instance.

1501. Earl of *Sandwich.*] Is there a navigation now?

No; it is a navigable river, however.

1502. Is not the navigation given up in consequence of the railroad?

It has ceased; but the river still remains a navigable river.

1503. The Navigation Trustees have not given up their rights altogether?

No, their rights remain still.

1504. Lord *Penrhyn.*] Is the Wye navigable at this moment by means of artificial works, or is it navigable by the natural depth and flow of the river?

By the natural depth and flow of the river.

1505. It is not in any way dependent upon navigation works that have been executed?

No; no more than that it has been deepened probably in places, and rocks removed.

1506. But it is not carried on by any artificial channel?

No; it is artificial only as far as its natural condition has been improved.

1507. Lord *Monson.*] What is the extent of the area in acres which you propose to put under the Board?

The catchment basin of the Wye, inclusive of that of the Lug, is 1,000,000 acres, and of the Lug alone, 240,000 acres.

1508. Earl of *Sandwich.*] If the navigation does not pay, what would be the advantage of keeping up the navigation, because that would be a great expense, I suppose?

There is no expense about it. I have just stated to a member of the Committee that it is reduced to the natural state, and is artificial only so far as rocks and shoals have been removed out of its course; but no expense is required to keep it as it is.

1509. *Chairman.*] You think it necessary to get rid of these weirs and mills?

Yes, I think it is very important that they should be got rid of. I think there is no one who would be a dissentient on that point in the county.

1510. But then I understand that there is a great height in some of these; eight feet you mentioned in one case?

The distance from Dinmore station to the mouth of Lug is about 14 miles, and the stream has a fall of about 40 feet. Between Moreton Station, which is a few miles lower down than Dinmore, and the mouth of Lug the fall has been computed at 34 ft. 8 in., and in that distance 14 ft. 6 in. of fall are taken up by these two weirs; the one 8 feet and the other 6 ft. 6 in.

1511. But then if you did away with all these weirs and obstructions, the bed of the river would be very much lowered, would it not?

The surface level of the water would be reduced a couple of feet perhaps.

1512. Would it not be very much lower in summer when there was a flood than that?

 1513. The

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The fall would be very gradual, and I do not think it would be very much reduced; but the flow of water would be much greater.

1513. If you were to do away with these obstructions, and so reduce the water, then would there be any overflow from that water on to the adjoining lands that are now under hay; would the water be high enough to go over the adjoining lands before the hay. You spoke of the advantage that was caused to these adjoining lands by the flow of the water over the grass; I ask you whether, if when you have got rid of these obstructions, weirs, and places that dam up the water now, that would not reduce the bed of the river to so low a height that you would not get any water from the river over the adjoining land?

You would still get the floods; you would not stop the floods; you would mitigate them, but you would not stop them.

1514. Lord *Penrhyn.*] What is the length of the Lug from point to point?

The whole length is 47 miles.

1515. And you would enable this Board, as I understand you, to do all necessary works connected with the river and for the prevention of floods?

Yes; and I think there are other matters which concern a river besides.

1516. What are those?

For instance, the city of Hereford derives its water supply from the Wye. The upper portion of the Wye is poisoned a great deal by lead mines. I think it is a matter which the Conservancy Boards generally should have charge of; in fact, all matters relating to keeping up the purity of the stream, and the prevention of harm that it may do. It seems to me that those powers might very fairly be given to it, to take all such steps as are necessary to prevent the river from doing harm itself or receiving detriment.

1517. Do you know how far the Pollution of Rivers Bill goes?

The Pollution of Rivers Bill leaves it very much in the hands of the Sanitary Board immediately adjacent to the town or place which pollutes the river, to act; and I fancy that is a weak point in the Act.

1518. That being so, you would supersede the provisions of the Pollution of Rivers Bill, and put the Conservancy Board in authority over these persons?

Yes, I should make them the authority.

1519. *Chairman.*] Would you propose to supersede the powers of the sanitary authorities generally?

The Conservancy Board might form a body that would very properly act as, and assume the powers of, the Local Government Board in many matters. The expense over the area would be very slight.

1520. What do you imagine would be the expense?

Something very nominal indeed; a penny rate would be ample for several years.

1521. Lord *Penrhyn.*] There is not much compensation that would be needed, excepting the two mills?

No; the two mills could be bought for 6,000 *l.* or 7,000 *l.*

1522. *Chairman.*] You are referring now only to the two mills?

I allowed a good deal beyond that.

1523. Would you allow them to do dredging, to clear away any shoals or obstructions that occur?

Yes; I think all those things might be done at no very considerable cost.

1524. At a penny rate?

Yes.

1525. What would a penny rate produce?

I calculate the value of the catchment basin at a million pounds a year.

1526. Lord *Penrhyn.*] How much of that area of a million acres is an area that is affected by floods?

A very small portion.

1527. Then you would be taxing the whole area of the million acres for the payment of compensation and for works over a very small portion of that area?

Yes; but I do not think there is any other way of doing it.

1528. *Chairman.*]

1528. *Chairman.*] In the works which you consider necessary for preventing the floods would it be necessary to have any embankment at all?
I could not say whether it would or it would not.

1529. Lord *Monson.*] How many acres of the 240,000 acres you mentioned round the Lug are affected by floods. You say, a very few in the Wye out of the million acres; how many out of the 240,000 acres round the River Lug?
It is rather hard to say. I tried to work it out with a land surveyor. It is something under 20,000 acres. That would include a higher piece than I have shown in the plan here, higher up the river.

1530. Duke of *Northumberland.*] What is the greatest height above the ordinary level of the water that the floods have reached?
In the Lug Valley, do you mean? The moment they extend outside the stream they cover a large extent of country; two to three feet of depth are considered very great there. The Lug immediately spreads over the country the moment the channel is full, and then covers a very wide district.

1531. Do not these weirs that you are complaining of belong to the Navigation Company?
The locks do; but the weirs do not.

1532. Did the weirs precede the locks then?
The weirs preceded the locks.

1533. Lord *Penrhyn.*] The weirs were not put up in order to serve the purposes of the navigation?
Not these two, which are in existence now, where the mills are. Some others were, which are partially pulled down; but these two I happen to know existed previously to the erection of the mills, although I am inclined to think that they were probably raised at the time the navigation locks were made.

1534. Viscount *Eversley.*] You mentioned one weir at the outfall of the Lug?
Yes.

1535. Was it put up for the navigation?
Yes.

1536. Lord *Penrhyn.*] Would not the removal of these weirs, and straightening the river, bring down floods into the Wye, to a certain extent cause floods there?
Yes, it would.

1537. What works do you propose for the Wye to get rid of those additional floods caused by the drainage of the Lug valley?
That would cause a little difficulty; but the difficulties now are not very serious, and I do not think that the amount that would be added to them would make them serious.

1538. You have never considered that point, perhaps?
Yes, I have. On the other hand, the floods at the lower part of the Wye are more retarded by railway embankments than they used to be.

1539. Earl *Stanhope.*] Are not the floods in the Lug near Leominster caused by the rains from the hills round there?
Yes, there is a very large catchment basin to the Lug indeed, for its channel.

1540. Is not that the primary cause of floods in the Lug, the quantity of water that comes from the hills?
Yes, a quantity of water which you cannot deal with without an enormous expense. It would take an enormous expense to confine the Lug to its bed.

1541. Any amount of embankment would be useless; there exists already a natural embankment of hills; is not that so?
The hills are the boundary of the river in flood times. The valley becomes the bed of the stream in flood time. The channel of the river is perfectly useless to carry the water that comes down then.

1542. Lord *Penrhyn.*] I understood you to say just now, that the throwing

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the water of the Lug with greater rapidity into the valley of the Wye would not cause any great amount of additional flood?

No, it would not to an extent to do appreciable harm.

1543. But then I understood you before in giving evidence to say that the floods in the Wye did occasionally damage the railway very much, and cause them great expense?

I do not think that is so on the Wye. On the Lug they have. I said that they had on the Wye damaged it to a certain extent; but the railway there had not been made long.

1544. Considering the manner of raising the taxation to pay for these works, should you include the railway company?

Certainly, all their property. It is a matter upon which I advance an opinion with great diffidence to the Committee. I think that the charge should be borne by all within the catchment basin.

1545. *Chairman.*] Have you any experience of the Act of 1861; has it been attempted to put it into operation?

Yes. I have an account of the works which have been done in the Wye catchment basin under that Act. One is at Letton, one at the Wormbrook, a tributary of the Monnow, and the third at Llangorse Lake.

1546. Has that Act worked well?

The only complaint I have heard of it has been from the Wormbrook Board, whose clerk states that the taxation should be according to the amount of benefit on each particular field or part of the area, not a uniform drainage rate.

1547. But how about the consent of the landowners in the first place, before it is put in operation?

In those instances there is no complaint; but in the instance I speak of the landlords have been sounded, and the local people who work these matters up have found it is hopeless. These schemes are got up by some great landlord or some civil engineer, interested in benefiting himself or in the benefit of the neighbourhood; but they find, owing to its being split up into small portions, and the farmers not being certain whether they will get benefit or not, that the scheme cannot be floated, and will not be taken up by anybody.

1548. Then so far as that goes, the Act of 1861 has not worked well?

No, it has not. It is a very valuable Act, but it does not meet this particular difficulty.

1549. Viscount *Eversley.*] I understood you to say just now that if you were to demolish all the mills and remove the weirs, the increased rapidity of the water would not have any effect in increasing the floods in the Wye?

I said that it would not create appreciable damage.

1550. Did I not understand you to say in answer to a former question, that when the Wye was full in flood time it kept back the water, and added to the floods in the Lug?

Yes, it does; it checks it. It did not occur to me that the Wye itself would act as its own defence, as it were, that the height of the Wye would check the height of the Lug; so that the increased flow of the Lug then would not be felt, because it would be deadened. That did not occur to me.

1551. Lord *Penrhyn.*] If the water of the Wye keeps back the water of the Lug near its outfall into the Wye, and you bring down the water in the upper part of the Lug with greater facility, surely that will raise considerably the flood at that point?

Yes, but the floods do not always come together; sometimes the Wye is high, and sometimes the Lug is high, at different times; it does not often happen that both are at the extreme height at the same moment. I do not think that an improved drainage of the Lug would in any way do any appreciable harm.

1552. Lord *Vernon.*] What is the exact character of the bank of the Wye at the junction of the Lug with it?

It is alluvial soil.

1553. Are

1553. Are the banks low there?
No, some 12 or 14 feet high.

1554. What would be the effect of embanking the Wye, so as to enable it to carry more flood water?
It would be quite feasible, but it would not be advisable.

1555. You said that the roads in the country about the Lug were blocked up for six or nine weeks together with water?
Yes.

1556. If the capacity of the bed of the Wye was increased so as to carry off the excessive flood water, that would naturally lower the Lug, would it not?
The Wye runs off very rapidly, and the Lug does not run off very rapidly. I do not see the necessity therefore of embanking the Wye.

1557. I meant on the land about the Lug, which is nine weeks under water, according to your evidence; that is a very serious loss?
Yes.

1558. Could you meet that by embanking the Wye at the point of junction with the Lug?
I do not see that that would affect at all the drainage of the Lug.

1559. You said that the floods in the Wye were caused by the railway embankment to some extent?
The flowing off of the flood is retarded by railway embankments.

1560. What acreage is affected?
A very small extent. On the Lug, they, perhaps, retard it more.

1561. Is that for want of proper openings?
Yes. I think not enough were provided when it was made; and the embankment of the canal retards the water more than the railway does on the Lug valley. It appears that it is rather cheaper to make the embankments solid. I think that should be properly put upon the railway companies.

1562. Lord *Winmarleigh.*] I think you said that one of the reasons why no improvement could be made in the Wye, was that there was no power of borrowing money; is that the only obstacle to that improvement?
I do not think much is wanted in the Wye at all.

1563. Does that observation as to the borrowing powers also apply to the Lug?
Yes, there are no powers; and apparently this Navigation Act is, as it were, a dead man's hand upon the drainage of the Lug valley. Apparently, under the Act of 1861, you cannot touch a navigable river.

1564. There is no present power?
No. I think if you took up the scheme under Mr. Clive's Act you would be beaten, by its being a navigation river.

1565. You said also that a great number of the farmers of the district thought the flood a benefit to their land, but that there were complaints from other parties of the overflow?
The farmers think that the floods are on too long a great deal, and they know that the mills are a great deal the cause of it; but they would not like to pay much for curing it.

1566. But you say that a certain party would be benefited by removing these obstructions?
The people who are immediately close to those mills. You see water is ponded back by these mills till it comes in summer time just level with the top of the soil, and in fact in some places it is two feet higher than the surrounding land, and the land below that level is not worth more than 1 *l.* an acre; and those people would be glad to pay something, but they are a minority to the whole of the owners of the flooded district.

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1567. Could you tell the Committee what proportion they form of the whole body?
About one-tenth, I should think.

1568. Then you think that nine-tenths of the parties would be opposed to any expense for improving the drainage of the river?
Probably you could not get two-thirds; certainly you could not get the number required. I could not say the proportions, but the majority certainly would be against any expense, because they are afraid of possible harm, and they do not see a benefit tangible enough to encourage them.

1569. Would they object to a small rate of 1 *d.*?
The rest of the catchment basin might object to that, but I think they would undertake that, and much more than that.

1570. *Chairman.*] But I understand you to say that the general feeling throughout the district is that they are very well satisfied with matters as they are?
No, the general feeling in Herefordshire, in the county generally, is strongly that the drainage of that valley should be altered.

1571. Lord *Penrhyn.*] Does the Lug form any county boundary?
No, it is wholly in Herefordshire in its lower course.

1572. Duke of *Northumberland.*] Artificial irrigation is not practised in that part?
No, it is not, because these two millers issue, or the chief of them issues, a notice in summer time, in dry weather, that nobody may take a drop of water, and the farmers see the water flowing by the mill, but they may not touch a drop of it for irrigation, and they would be pleased if they could get the water in dry time for irrigation.

1573. *Chairman.*] The tenor of your evidence is that the county of Hereford would be very glad indeed to see some improvement made in the drainage of these two valleys, the Wye and the Lug?
The drainage of the Lug valley.

1574. The Wye and the Lug I understand together?
Yes, you may take them together.

1575. And your idea is that to meet that there should be a board set up, constituted as you have described partly by the boards of guardians and partly by the courts of quarter sessions, who should have the power given them to deal with all these matters?
Yes; I advance those views with great diffidence.

1576. And you think that any works necessary for carrying out those views, improving the drainage of the river and preventing the floods, might be done at a very small rate over the whole area?
Very slight indeed.

1577. And you would propose to tax the whole of the area whether they derive any immediate benefit or not?
Yes; the rain that falls upon their acreage contributes to the floods in the lower district, and there is more or less responsibility on them, and more or less they would derive benefit.

1578. They are not responsible for the water?
They improve their own drainage, and send water down more rapidly in flood time.

1579. Earl of *Sandwich.*] If there has been this general feeling, why has there been no meeting; why have they taken no steps to get this drainage done?
It has been thought to be a local concern. The general body of people think that the local people should do it; those immediately affected.

1580. There have been floods over the country, and there has been a great movement

movement elsewhere for getting the drainage done; but there has not in your district, you say?

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It is hard to account for it. It may be lethargy; I cannot tell you. It may be waiting for something to be done by somebody else.

1581. Lord *Vernon.*] It may be satisfaction?
It may be.

The Witness is directed to withdraw.

MR. EDWARD LEADER WILLIAMS, is called in; and Examined, as follows:

Mr. *Williams.*

1582. *Chairman.*] You reside at Worcester?
I do.

1583. And you are connected with the Severn Navigation Commission?
I am.

1584. In what capacity?
As engineer.

1585. And how long have you been connected with the Severn Navigation?
I have been officially connected with the Severn for upwards of 40 years. I have been the engineer of the Commission from its appointment in 1842, and the whole of the works for the improvement of the navigation have been constructed under my superintendence, and from my designs.

1586. First of all will you tell us how is the Commission appointed?
The Commission is a representative body, consisting of 30 noblemen and gentlemen, residing in the district, and representing the following bodies:—There are three representing the Justices of the Peace for the county of Worcester; there are four representing the Town Council of Worcester; there are four representing the Town Council of Gloucester; one representing Bristol Town Council; one representing Droitwich Town Council; one representing Tewkesbury Town Council; one representing Wenlock Town Council; one representing the Lower Avon Navigation; two representing the ratepayers of Stourport; two representing the Staffordshire and Worcestershire Canal Company, which enters the Severn at Stourport; two representing the Worcester and Birmingham Canal Company, which enters the Severn at Worcester; two representing the Gloucester and Berkeley Canal Company, which is connected with the Severn at Gloucester; one representing the Gloucester and Hereford Canal Company; one the Coomb Hill Canal Company, and three representing the Justices of the Peace for the county of Gloucester.

1587. How many is that in all?
Thirty.

1588. From your experience of the working of that Commission, has that Commission worked satisfactorily or not?
It has worked very satisfactorily for the whole district, I believe.

1589. What district does it comprise within its jurisdiction, how much of the river?
Forty-two miles; from Stourport 12 miles above Worcester, to Gloucester 30 miles below.

1590. And have they power to improve the navigation and other matters connected with it?
They have.

1591. What does that include; removing shoals?
Removing shoals and erecting works for the purpose of improving the navigation; and with reference to improving the navigation; also facilitating the passage of the heavy floods to which the Severn is subject, the height of the Severn floods being greater perhaps than those of any other river in the Kingdom.

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1592. How are they with regard to the Thames; have you made any comparison?

I have. The drainage area of the Severn is 8,500 square miles, that of the Thames, 6,100 miles. The gauging of a Thames flood at Windsor Bridge gives 14,102 cubic feet per second discharge; a gauge taken by myself at Worcester Bridge in November 1852, the highest flood that I have known since my connection with the river, gave 24,107 cubic feet per second; that is, 24,107 against 14,102 on the Thames.

1593. At what period of the year do the floods more frequently happen in the Severn; in winter?

Winter floods. I only remember one summer flood throughout the whole of my experience with the Severn.

1594. And as to these winter floods, do they cause great damage?

They cause delay to the navigation, and if they are on the land too long they cause injury to the land. The landed proprietors are very anxious to get the flood upon their land quickly, and off quickly; get it off immediately it has deposited the silt which is brought down from the upper districts of the river, and sometimes brought down in very large quantities.

1595. Have the operations of this Commission of which you are engineer put an end to floods?

Not put an end to them; the quantity of water coming down from the Welsh hills would make it impossible that we could put an end to them.

1596. I ought to have asked whether they have diminished them very much?

We have diminished the duration of them, they pass off more quickly. The landed proprietors have given us evidence, whenever we have had Parliamentary inquiries upon the district, we have had no difficulty whatever in getting evidence from the landed proprietors of the facilities that the new works have afforded to the passage of the flood water. I would just mention, if you would allow me, the evidence of one of the largest occupiers of land, occupying under Lord Dudley, who occupies about 600 acres. His evidence upon the subject is, that although the land is situated immediately adjoining one of our works, the weir abutting upon his land, yet the floods pass off very much more rapidly, and do not rise so high as they did previously.

1597. I understand your jurisdiction terminates near Gloucester?

At Gloucester.

1598. Your works having had the effect of rapidly diminishing the floods over that part of the country over which you have control, what effect does that have below?

I am afraid that we rather drown the lower district, because we discharge the flood so quickly upon them that they are not able to carry it off as quickly as we deliver it; and I think that is a very strong reason why the Severn Commission should be extended to the lower district.

1599. Do you deliver to the lower district anything besides water; is there not silt, and mud, and stuff that is brought down?

No; the silt in that district is brought from below. The flood tide of the Severn is very peculiar; the flood runs up for two hours with amazing velocity, and the ebb extends for 10 hours; so that the greatly increased velocity of the flood brings up an amazing amount of mud from the lower district. And with regard to the lower part of that district, which is under the Severn Commission, between Tewkesbury and Gloucester, five years ago we had to come to Parliament for powers to extend our works down below Tewkesbury, where they then terminated, to enable us to scour away the mud which was brought up from below, and which was positively choking our river up. We extended our works down to Gloucester, erected locks and weirs there upon the improved principle that we have adopted, and the result of that has been that the whole of that mud that was deposited previously to five years ago is carried away. I have not had to dredge a single yard of mud, or gravel, or any material from the whole of that 12 miles between Tewkesbury and Gloucester since the erection of the lower works.

1600. Then your experience is that the Commission has been so satisfactory in its working that it ought to be extended over the whole of the river?

I think so, especially as we have representatives extending over the whole of the river. We have them from Wenlock in Shropshire, and Ironbridge, in Shropshire, down to Bristol and Newport.

1601. How is the money raised to carry out all these works that you have been describing?

We have borrowed 200,000 *l.* or 300,000 *l.* upon the credit of the tolls levied on the trade.

1602. That is under your Act, I suppose?

Yes. Our trade extends to between 300,000 and 400,000 tons a year, and is now increasing.

1603. What is the net income?

The income that we proved before Parliament in 1842, upon which we proposed to borrow the money, that is, the income that we expected to receive from the amount of traffic which we proved was upon the river, at a rate of a halfpenny per ton per mile in one district, and a farthing per ton per mile in another, was 14,000 *l.* a year.

1604. Gross income?

Gross income. And we received that up to a certain time, till the railways came into operation in our district, and then we applied to Parliament; when the Great Western and the London and North Western Railway Companies were competing for our district we opposed them in Parliament, inasmuch as we told the Parliamentary Committee that they, having given us power to raise money from the public for the improvement of a public highway for the benefit of the public, they ought to protect us, now that these parties were coming to take away some of the traffic, upon the credit of which Parliament had enabled us to borrow this public money.

1605. What did Parliament say to that?

They gave us a guarantee, and the result of that guarantee has been that the Great Western now for some years has paid us between 6,000 *l.* and 7,000 *l.* a year.

1606. For supposed damage done to the trade of your river?

Trade abstracted from our river.

1607. Lord *Penrhyn.*] Was that by private agreement, or was it in the Act of Parliament?

It was in the Act of Parliament, obtained by the Great Western Company, by the Oxford, Worcester, and Wolverhampton, as it was at that time.

1608. Lord *Somerton.*] Are you of opinion that the peculiar action of the tide, which you described just now, has any tendency to cause or to increase the floods?

No, the peculiar action of the tide on the Severn does not increase the floods. The Severn floods are independent of the action of the tides; they pass off the more rapidly during the neap tides than they do during the spring tides; that is to say, if a flood comes down from the upper district of the Severn and happens to meet a high spring tide flowing, the tides then, to a certain extent, do affect the floods; but that is the maximum extent to which they affect them.

1609. Does not the flood sometimes come up in what is called a bore; a great wall of water?

Yes, that is a tidal wave; it comes up as far as Gloucester.

1610. And no further?

No.

1611. And does it not affect the floods?

No; we have a flow of tide up to Tewkesbury, and sometimes the tide comes over Tewkesbury Weir and backs up our water up to Worcester.

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1612. *Chairman.*] You told us that the income of the navigation was 14,000 *l.*?
Yes.

1613. Which was made up partly by the 5,000 *l.* which you get from the Great Western Railway Company?
About 6,000 *l.* is the average which the Great Western Company have paid.

1614. That leaves 8,000 *l.*?
Yes.

1615. How is that 8,000 *l.* made up?
By a toll upon the trade.

1616. Amounting to 8,000 *l.* a year?
A toll amounting to 8,000 *l.* a year; on a trade of between 300,000 and 400,000 tons a year, and it is still increasing.

1617. And your proposal would be to have a Board over the whole river?
To have a Board extended over the whole river.

1618. And the tolls over the whole river?
The tolls would be very trifling, either above or below Worcester, because there our navigation is connected with the Gloucester and Berkeley Canal; and it enters the Gloucester and Berkeley Canal at Gloucester, and it is carried on through that canal into the Lower Severn. Now the intermediate part of the Severn is very tortuous, and is very full of shoals, and consequently a very great impediment to the passing of flood water; and it is that particular district over which there is very little trade which does the mischief in keeping the floods over the district so long.

1619. Supposing you had this Board over the whole river, would you be able to meet all the expenditure that would be necessary by the tolls, or would you have to rate any portion of the country?
If we did that which is required to facilitate the passage of the flood water to the same extent as we have facilitated it above, it would require the outlay of rather a large sum of money; it would require new cuts made where the river is very tortuous, and the removal of one or two benches of rock, which cross the channel of the river, and form natural dams.

1620. Where would you propose to get the money for that?
I think from the whole of the district which would be benefited; by a *pro ratâ* rate levied in proportion to the improvement which was made, upon the proprietors of the adjoining lands.

1621. How much of the country would be benefited by that?
The whole of the country in the neighbourhood of Gloucester, from Gloucester to Newnham, 12 miles.

1622. That would not be a very large area to tax; would you tax the whole country?
The drainage area would be large, because the valley is wide there.

1623. Then you would tax a great number of persons who would derive no benefit, would you not, if you taxed the whole area?
I should not tax the whole area; only those who were benefited.

1624. Where would you draw the line, and how would you draw the line?
Those who were under flood, and upon whose land the flood hung to any great extent, would pay in proportion to the amount of benefit they had derived.

1625. With regard to those rocks which you spoke of, which you would have to remove, would there be any objection to that on the part of any of the proprietors there?
No, I think it would be a universal benefit; every one would be very glad to have them removed. All the landed proprietors, I am quite sure, would, and every one connected with the Upper Severn.

1626. Why,

1626. Why, if this would be so great a benefit to the district, are the operations of your Board confined within the limits that they are?

That is a very wide question. We had great difficulty in getting our Parliamentary powers in the first instance; there was great jealousy on the part of the Gloucester district lest we should carry their trade, the sea-borne vessels which stop there now, higher up the river, and away from them; and the result was, that we were defeated in Parliament several times in two or three of our early applications, from the opposition of the Gloucester interests particularly. Now we terminate at Gloucester, and our traffic runs into the Gloucester and Berkeley Canal.

1627. Your experience is, that some Board is necessary in all these rivers where there are great floods?

I think so.

1628. And that would be a representative body as you have described it?

Yes.

1629. And you would give them power to levy money upon those lands which were benefited by having the floods removed?

Yes.

1630. And, from your experience, you do not apprehend any difficulty in carrying that out?

No, I do not. I think wherever rivers are capable of being improved for the purposes of navigation, the works for the improvement of the navigation should be constructed, as they have been upon the Severn, with a view of facilitating the passing of the flood-water as well; and, therefore, that where there is a sufficient traffic likely to be obtained upon an improved navigation, the traffic itself would pay the whole of the outlay. I think that applies, to a certain extent, to the River Avon, the Warwickshire Avon, which runs into the Severn at Tewkesbury. The Warwickshire Avon is divided into two districts, the upper district and the lower district. The upper district was supposed to belong to the Great Western Railway Company; but during the last few months the Railway Company have been brought before the Railway Commissioners, upon the complaint of the land proprietors and everybody connected with that district, that they have allowed the works to get into such a dilapidated state, that the country is flooded to a very great extent unnecessarily; and there is no traffic whatever upon the river. The Great Western Railway Company got out of the difficulty by repudiating the ownership of the property; they said that the agent who bought it nominally for them was not authorised by them, and they had not taken possession, nor did they intend to take possession; and so the upper district, in point of fact, belongs to nobody.

1631. Would you put the River Avon under the same Conservancy Board?

I would.

1632. All one district?

All one district. The River Avon is represented upon the Severn Commission, and therefore I think that the Severn Commission ought to have jurisdiction over it.

1633. And the River Avon has got, as I understand you, into a very neglected state from its being nobody's duty to look after it?

That is the upper district. The lower district is in a better state, and there is some amount of traffic on the Lower Avon; but the works are so very ancient as to be quite out of date in the present state of affairs. The works were not constructed with the view of passing off the floods, but were constructed I think in 1650 or about that date, I think; and all that has been done since has been to keep the old works in repair in the old shape; and therefore they are not at all adapted to the present wants of the district.

1634. Earl *Cowper.*] Do you not think that if you assumed power to tax the owner for the benefit that is conferred upon them, these owners would expect to be represented upon the Board?

The owners are represented on the Board: the whole of the landed proprietors in the district are represented, inasmuch as there are the county magistrates;

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the county of Gloucester sends three or four representatives, and the county of Worcester, three or four to our Commission.

1635. Out of 30?
Yes.

1636. And they represent the whole county, not merely the riparian owners?
They represent the whole county, not only the riparian owners.

1637. Therefore the actual riparian owners only get a very small portion of representation?
Comparatively.

1638. The owners in Warwickshire are not represented at all?
Not represented at all.

1639. Do not you think that these owners, if they were to be taxed, would require more representation?
I think very likely; and it would be a very equitable arrangement that they should have more representatives.

1640. Lord *Penrhyn.*] You would include in your Board that you would suggest the whole of the district?
The whole of the district.

1641. Do you mean the districts of the whole of the tributaries of the Severn as well as the Severn itself?
That would take rather too wide a scope perhaps; but I would say all those that are at present on the Severn Commission.

1642. All that district which is represented by members of your Board?
Quite so.

1643. Then with regard to the taxation, I think you spoke of taxing, according to the degrees that they are benefited, the owners of all the lands which would be benefited by these works?
Yes.

1644. But in your opinion it would not be fair to tax those districts, or those owners of land in districts, which contributed to the floods by draining. I do not know whether you are of opinion that drainage in the upper lands contributes towards forming these floods?
It does, to a certain extent, but I think that is a very wholesome arrangement. I think that the improvement of the land by drainage, shooting the water more rapidly into the main outlet, may certainly have a tendency to raise the floods where there has not been a corresponding improvement in the main channels, to carry the water off as fast as it is delivered. I think that the Severn floods are very little affected by the mere drainage outfall as compared with the shooting down of immense bodies of water from the sides of the Welsh mountains; there is where we get our principal floods, and that has very little reference whatever to the drainage. I do not think the drainage of the land has much influence upon the Severn floods.

1645. Therefore, in your case, you would not represent the occupiers of land over the whole area, but merely the owners or occupiers of those lands which are benefited by the works to be constructed?
Quite so.

1646. Then you spoke of improved weirs; have you any plan, or can you describe to the Committee what the nature of those improved weirs is?
The question was fought over during nearly six weeks in the House of Commons as to the peculiar construction of our weirs. All the great hydraulic authorities of the day were examined *pro* and *con*, and the result has been that we have arrived at a form of weir which does facilitate the passing off the flood-water, which not only pens up a certain quantity for the purposes of navigation, but facilitates the passing off of the flood-water as well.

1647. I did not doubt the fact of the improvement, but can you describe to the Committee what the nature of the improvement is?

The weirs are calculated to be just of that length which will carry a given quantity of water at a given height above the upper sill, and the weir is say 500 feet long; where the channel above it is only 150 feet wide, we make the weir 500 feet long, and give it such a shape as will increase the velocity of the water in its passage over it, and the consequence is that if we increase the velocity in any one given section of the river, and continue that increased velocity, we must increase the velocity throughout the whole of the channel.

1648. Then what I understand your weir to be is, a weir with varying heights in it, one lower than the other?

No; it is a dead level, a solid weir. But the peculiarity of the weir is, that instead of being flat upon the upper sill, as most of the old weirs are, it has a parabolic curve on the back of the weir. The back of the weir forms a parabola, and that parabola is carried over the sill, and we have found that that will discharge the water on the principle of the *vena contracta*, with very much greater facility than a weir that has a mere flat upper sill. And the result has been that we have kept the floods down to an extent which has caused the Shropshire owners, who were originally dependent entirely upon floods for their navigation from the upper districts of the river, to complain, "You have interfered with our interests because our floods do not last half so long as they did before."

1649. They do not, as I understand you, consider it an improvement; but then have you your weir constructed with a convex shape to the upper part?

If you will allow me, I will draw a section of it. (*The Witness draws a section.*) The theory that we had to contend with put forward by our engineering opponent when we were in Parliament was, that we should destroy the action of the under current by putting in a dam in the river. Remember that the Severn was, previous to our improvement, in a state of nature, without any improvement whatever having been made in its channel.

1650. I only wish you to explain to the Committee the sort of weir which you have spoken of as an improved weir?

That is a section of it (*producing the section of it*); it takes the water more rapidly over.

1651. Lord *Somerton.*] Does this curve (*pointing to the section*) throw the water more rapidly over?

Yes; we arrived at it by a series of floats, floated down from the top to the bottom, and ascertaining what course they took in meeting with a vertical obstruction like that (*pointing to the section*).

1652. The lower part of the Severn is very flat, is it not?

Yes.

1653. If you were to throw the water down into the lower part of the river by means of taking away the weirs and the locks, would not that cause a greater flood when the tidal waters were coming up?

No. Is your Lordship supposing the case of the whole of our weirs being removed?

1654. Yes?

That was the original state of the river when we were dealing with it in 1842.

1655. You do not propose to do that, to do away with the navigation?

No.

1656. Then I understood you to say that there were certain impediments in the lower part of the Severn which would be subject to the tidal water which ought to be cleared away?

Yes.

1657. Would not the clearing of those away also facilitate the rising of the tide, and enable the tide to come rushing into the river higher and quicker?

It would, and that would be a certain amount of advantage.

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1658. But would it not for a time raise the floods owing to the rive water?

No, the flood tide of the Severn is only two hours, and the ebb 10; so that it would be a momentary sort of thing.

1659. It could not dam up the river water, you think?

Not at all.

1660. Marquess of *Ripon.*] I understand you to consider that if the weirs are properly constructed there is no opposition between drainage and navigation?

None whatever; but, on the contrary, the weir, if properly constructed, greatly facilitates drainage. I may, perhaps, put it in the very strong way which it was put to me by a very great hydraulic authority, who led the opposition to us, the late Mr. James Walker. He was sent down by the Admiralty to inquire into the action of our works, when we wished to extend them below Worcester. They stopped at Worcester first, and then we wished to extend them to Tewkesbury, and the Admiralty sent down Mr. Walker to hold a preliminary inquiry as to the operation of our works. Our Worcester Weir had been in operation for 16 years at that time on that plan, and I remember Mr. Walker, standing at the end of the weir, said to me, "Now, Mr. Williams, do you remember what you said in 1842, that you could put a dam in the river and facilitate the passage of the water by it? How much stone is there in that weir?" "7,000 tons."—"Do you mean to say that by putting 7,000 tons of stone in a river channel you can facilitate passing the water off?" "Yes, we have done it, and done it for 16 years."—"What is your theory?" "Simply this, that whereas the first of a flood coming down from the Welsh hills met with the obstruction of the whole of the shoals, met a channel empty of water comparatively, with 2 feet 6 inches of water over the shoals, the consequence was that the first of the flood was impeded very much in its course down the river; now it comes into a series of deep quiescent pools, and directly the first of the flood touches the upper end of that pool, it sets the whole in motion; and the theory is that water will run faster through water than it will over gravel."

1661. Are these weirs more expensive than ordinary weirs?

No, they are not. They are solid without any moving sluices, therefore they are perfectly self-acting, and do not depend for their acting upon any manipulation whatever.

1662. I suppose you would hold that ordinary weirs differently constructed are an obstruction to floods?

Yes; I know some of the old Thames weirs; I was born on the banks of the Thames, and I know some of the old Thames weirs are very obstructive; and these weirs that I have been speaking of on the Avon are very obstructive.

1663. Earl of *Sandwich.*] The weirs are meant to be obstructive?

They are meant to be obstructive to the passing off of a certain quantity of low water, but they are not meant to be obstructive to the passing off of a flood.

1664. By a weir you keep water up to a certain level?

Yes; our weir at Worcester keeps the water six feet higher than it was originally, and that tails for four miles up to the next work; so that we have a deep pool of quiescent water of four miles in length, and when the first of the flood comes down into that, the flood sets the whole of that mass of water in motion, and it is discharged much more rapidly than it would be if it came into an empty channel.

1665. Duke of *Northumberland.*] It is discharged at a much higher level, and therefore more likely to pass over the bank, is it not?

No, the whole is level before it reaches the top of the bank, and therefore the weir cannot be any obstruction whatever. Our traffic goes over the weir immediately they are out of operation. The Diglis Weir is sometimes out of operation three or four months in the winter. The whole of the trade goes over the top of the weir, where it is perfectly level; steam tugs and a whole fleet of vessels go over it where it is perfectly level, so that it cannot be an obstruction.

1666. Lord *Somerton.*] Then I understand you that in flood-time the navigation ges over the weir?

The navigation goes over the weir in flood-time.

1667. And

1667. And then there is no navigation through the locks?
Yes, sometimes for three or four months in the winter the whole of the traffic comes over our lower weirs.

1668. Earl of *Sandwich.*] You do not mean that the barges go over the weirs, do you?
Yes, I have seen a train of vessels half a mile long behind a steam tug all taken over the weir, without knowing where the weir was.

1669. Marquess of *Ripon.*] Have weirs on this principle been built anywhere else than on the Severn?
No, not that I know of. The adoption of this principle was the result of the six weeks' discussion we had in Parliament in 1842.

1670. As it has been in operation there for 35 years, is it not curious that it has not been adopted elsewhere?
There has no such work been done in the present day as we have done in the Severn, taking the river in its rough state, and making it into a work of art; there has been no parallel case.

1671. You said that the cost of making the new weirs was not greater; that the weirs on the new principle did not cost more than those on the old principle?
Certainly they do not.

The Witness is directed to withdraw.

MR. WILLIAM HAMOND BARTHOLOMEW, is called in; and Examined, as follows:

1672. *Chairman.*] You are General Manager and Engineer to the Trustees of the Aire and Calder Navigation?
I am.

1673. How long have you acted as engineer to them?
Twenty-five years.

1674. Then I suppose you are very well acquainted with the basin of the Aire and Calder?
I am.

1675. What distance does the Aire traverse from its source to its connection with the Calder?
Sixty-one miles.

1676. And what is the drainage area of that part?
Two hundred and twenty thousand nine hundred acres.

1677. And now with regard to the Calder; what is the distance it traverses from its source?
From its source to Castleford it is 44 miles, and has a drainage of 234,240 acres. The rivers unite at Castleford, and go forward to their junction with the Ouse, a further distance of 30 miles, and a further drainage area of 54,720 acres. The total drainage of the two basins is 509,860 acres.

1678. Have you any maps to show the basins of the Aire and Calder?
I have (*producing some maps*).

1678*. Have you any account of the floods that take place in the Aire and Calder?
Yes, I have several returns of gaugings taken at different points.

1679. What do they show?
They show that, taking the last 10 years, the highest flood was in November 1866, and at Leeds it rose 14 feet above the gauge sill, which gives a rise of seven feet; that is in the Aire. The next gauging on that river taken below was at Castleford; and in the same flood it rose nine feet at Castleford, about 12 miles below Leeds.

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1680. At Leeds it was seven feet, and at Castleford it was nine?
Yes.

1681. And how far does the jurisdiction of the navigation of the Aire and Calder extend?
It extends from Leeds to Weeland on the Aire, and from Wakefield to Castleford on the Calder; the undertakers have leased also the navigation above Wakefield, from Sowerby Bridge to Wakefield, a distance of 21½ miles.

1682. The jurisdiction conferred upon the Aire and Calder Navigation has been conferred upon it by several Acts of Parliament, I suppose?
Yes, by several Acts of Parliament. The first Act was an early one in the reign of William the Third; that was the first constitution of the body. Then there was a further Improvement Act in the 14th of George the Third; another in the 1st of George the Fourth; and another in the 9th of George the Fourth.

1683. Your attention has been turned, I suppose, very much to the floods, and also to the mode of dealing with them?
It has.

1684. And what, in your opinion, is the best way of treating these rivers, with a view to diminish the floods?
The Calder and Aire valleys are peculiarly situated; they are situated on a coal field, and a great deal of subsidence has taken place in consequence of the coal having been removed; and, therefore, in some degree, it is peculiar as a series of basins or hollows have thus been formed in the surface of the ground; and, as the river is very tortuous, I would strongly recommend for that valley that it should be dealt with by cutting off the bends, that is, cutting through the necks of the bends, or straightening the course of the river where practicable.

1685. Would you embank at all?
To some extent the rivers might be further embanked with advantage; in some cases they could not.

1686. Has it ever occurred to you to set up reservoirs for the purpose of controlling the floods?
Yes, it has been suggested, and I have considered the question. I do not think it would be of much advantage to the district, having regard to the great cost it would be attended with; as to be of any service the reservoirs would have to be numerous and of great capacity.

1687. In any dealing with this question of floods a certain amount of expense would have to be incurred?
Quite so.

1688. Upon whom would you propose to lay that burden?
I think the fairest way would be to put it upon the county rate, by that means all interested parties would contribute.

1689. But when you say "interested parties," whom would you include in interested parties?
I refer to the riparian owners, who are contributors to county rates through their tenants, the different towns, and also the navigation and the railways, all of whom would be benefited.

1690. When you say out of the county rate, you would have to levy a separate rate, I suppose, or would you have it over the whole county?
Over the whole county.

1691. Whether they benefited or not?
No, only where the basin included the whole county would I have the whole county included.

1692. You would set up a body of Commissioners for every catchment basin?
I would.

1693. And then you would tax in that basin all persons who were benefited?
Yes.

1694. Then

1694. Then you would have a separate rate other than a county rate?
It might come out of the county rate derivable from those particular districts benefited; those particular districts or basins should alone pay to it. It should not come out of the whole county, if the whole county did not benefit. If the whole county were divided into Conservancy Boards, there might be a conservancy rate apportioned to each basin, the call upon such basin being in accordance with its requirements.

1695. Where would you limit your benefit?
I should limit it to cutting off the bends of rivers, to their general conservancy, to the looking after the non-pollution of rivers, and to the carrying out of the Salmon Fisheries Act.

1696. That is what you would give these Commissioners to do?
Yes.

1697. And then you would allow them to tax the particular part of the county immediately in the neighbourhood of the rivers?
Yes.

1698. I do not quite understand how you would fix who were the persons who derived the benefit; what would you consider to be a benefit?
I should consider all parties benefited in the district throughout the basin, and therefore it would be much the same as a poor rate; they would be proper parties to tax for the benefit they received, and it would go much upon the poor rate principle.

1699. And you would give the Commissioners the Pollution Prevention Act to carry out, and the Salmon Fisheries Act?
Yes.

1700. How would you enable them to carry out works; would you give them unlimited power to do what works they thought expedient?
I should control expenditure for works by requiring them to apply for a Board of Trade Order.

1701. A Provisional Order?
For a Provisional Order, and thus parties aggrieved might state their objections.

1702. Then how would you compose this body; would you have it a representative body?
A representative body; one-third to be county magistrates, who should elect the chairman for the whole body; one-third the mayors of town, and the local authorities; and one-third navigation interests. Why I propose that local authorities should have a limited interest is because we have found a difficulty in our own district in moving them to put in force the powers they already possess for the conservancy of tributaries of the rivers. We have recently had a case at Leeds, the Sheep'scar Beck, a tributary of the Aire, which runs through the town. It is a very foul beck, and under the Act of 1842 the town council of Leeds have the power to prohibit its being fouled, and solid matter or refuse being put into it. We complained to the town council, and desired that they should take action in the matter, but were unable to move them, because the creators of the nuisance were some of the members of the corporation, and in order to avoid any offence to them we were desired, that is the Aire and Calder were desired, to proceed against the parties under their own Acts, which we did last year. The case came before Baron Bramwell and Justice Grove. It was held that the Navigation Acts only extended to their own waters and to their improved channels, and as this was not an improved channel we were defeated. And this instance shows how difficult it would be to get local bodies and corporations, who are the creators of the nuisances, to put in force any power provided for their remedy.

1703. Is the country in the neighbourhood of the Aire and Calder very much injured now by floods?
Yes, the lower portions, especially below Castleford.

1704. Is that within your jurisdiction?
Within our jurisdiction. With regard to the upper portion of the Aire, I perhaps should explain that there already exists a Commission called the Airedale Drainage Commission, which extends from a little above Skipton to a little below Keighley, Stocks Bridge; the Commissioners have already improved the river by

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cutting off the bends and embanking, and have done very considerable service. There is no jurisdiction between Keighley and the Aire and Calder at Leeds. The Aire and Calder commences at Leeds, and continues to Weeland, a point about 10 miles from the junction of the Aire with the Ouse, so that there is no jurisdiction on the lower portion of the Aire.

1705. Marquess of *Ripon.*] There is no jurisdiction between Keighley and Leeds?

None.

1706. *Chairman.*] Is that part of the country much subject to floods?

More particularly below Leeds from Thorpe Hall to Castleford, and then again below Knottingley right away to Rawcliffe.

1707. Is that a part that is now under your jurisdiction, or under anybody's jurisdiction?

Yes; I should explain perhaps that the river portion has been partially canalised; so that the undertakers of the navigation have a limited interest in a portion of the river, by which I mean such portion as is only used for carrying away flood waters, and is not used for the purposes of navigation. They have made canals in many instances alongside the river, although by their Acts they have powers of navigation throughout the rivers, they have discontinued to do so as such, having made canals in preference.

1708. So that they do not care what happens to the river?

The case is peculiar. At Leeds, for instance, they navigate the river for a mile and a half.

1709. Do they take the river water for the canal in any part?

Yes, the summit is the River Aire at Leeds, which goes into the first canal.

1710. Have you the powers now of diminishing these floods?

We have the power to prevent deposits being put into the river within the district of our jurisdiction, but not above; and the great difficulty which we have is to prevent the tributaries bringing them in. If we had power over the tributaries we could stop the practice of putting them in.

1711. So that if you had one Board over the whole of the basin, you then would have sufficient powers to prevent these other tributaries from interfering with the river?

We should.

1712. And would that diminish the floods lower down?

No doubt.

1713. Lord *Penrhyn.*] Those tributaries come in a great measure through open moor land, do they not?

The Aire Basin is rather precipitous above Leeds; as it gets into the higher lands there is moorland, but it does not spread over any very great surface.

1714. And there is a good deal of moor land, is there not?

There is in some portion of the Aire district, but a large extent in the Calder Basin.

1715. Earl of *Sandwich.*] Do you say that there have been great complaints of these floods in the Aire and Calder Valley?

Yes, there have been complaints.

1716. Have they had any great county meetings about them?

No; there seems to be no executive to make a move. Take, for instance, the last winter; the lower portions of the Aire, round Rawcliffe and Snaith, suffered considerably, owing to a clough having been blown up by the pressure of the water in the river.

1717. But surely the people who suffered would make some complaint?

They make complaint amongst themselves, but they do not take any steps to get the drainage done.

1718. Lord *Penrhyn.*] The two districts through which the Aire and Calder falls are two distinct districts?

From the sources, down to Castleford.

1719. The towns that are connected with the two streams, are towns which have no great connection with each other; is that the case?

That is so.

1720. *Chairman.*]

1720. *Chairman.*] Have you ever turned your attention to the advantage of storing water for manufacturing purposes, or compensating mills?

Yes, such might be done for manufacturing and compensating purposes; but the larger boroughs, such as Halifax, Bradford, Leeds, have already obtained the best gathering ground, and the best sites for reservoirs for domestic purposes; and hence the lower districts, having had their waters polluted by these upper manufacturing towns, find great difficulty in obtaining domestic supplies of water; and I strongly feel that the towns that have got the powers, and have got the water, should also be compelled to give a supply to the lower districs at fair and reasonable rates.

1721. You said that it would be advisable that each river or each district should be under a Commission?

I think one river should be under one Board.

1722. Have you at all thought how it should be put under that Commission, whether it should be the compulsory action of Parliament, or the compulsory action of Government, or whether it should be set in motion by those who lived in the neighbourhood on application to any authority in London?

I think it should be done by Parliament; hitherto their own efforts have failed through one difficulty or another; and therefore, for the public benefit, I think that Parliament should step in and say how it should be formed.

1723. That is to say, you would have Parliament come forward and map out the whole country into basins or areas?

I would do so, or otherwise give facilities for forming Boards; that is to say, I would have a general Act, the same as the tramways, or any other general Act, under which a district could be readily formed.

1724. You would facilitate their formation, believing that if it was their interest, when they found there was no difficulty put in the way, these districts would be formed?

Yes, in many cases.

1725. In cases where they were not formed would you bring them in compulsorily?

I think the Local Government Board, or some body, should have power to do so; they should have a local inquiry.

1726. I understand you to say that the last operation would be by means of a Provisional Order?

Yes.

1727. So as to give all parties a right of appeal?

Yes; and I would also have the Commission or body further controlled by having to submit their plans to the Local Government Board, or some central authority, before they carried out any works.

1728. Lord *Somerton.*] You said that there should be a Board for each river; do you mean for each river, or for each catchment basin?

Each separate basin.

1729. Lord *Penrhyn.*] For instance, in this case you would recommend a separate Board for the River Aire from that of the River Calder?

Yes; the Aire should have one Board from its source to its junction with the Ouse, and the River Calder a separate one from its source to Castleford.

1730. Lord *Somerton.*] That is because they are two catchment basins?

Yes.

1731. Marquess of *Ripon.*] You would give powers to these Commissioners, as I understand you, not only with regard to the prevention of floods, but also with regard to the prevention of pollution of rivers?

Yes, I think it is decidedly necessary. The Act of last year is generally received as being an Act which in a great measure is inoperative. It is a great warning to parties polluting rivers and also to those casting in refuse; but the difficulty is to put it into action. Take solid matters, for instance; you have to prove that such an act does interfere with the due flow of the stream.

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1732. Then do you think that a local board would be able to solve that difficulty any more than a general Act would?

I think that a Conservancy Commission would be able to make itself heard in Parliament, and get that measure sufficiently strengthened to deal with the matter.

1733. *Chairman.*] You mentioned the Pollution of Rivers Act; it has not come into operation, has it?

Yes, the solid matter portion.

1734. Does it not come into operation in August?

For solid matters I am under the impression that it had already done so.

1735. When you stated that the Act is inoperative, it has hardly had time to show whether it is an inoperative Act, or not?

I do not think that there has been any case taken under it.

1736. You would wish, perhaps, to correct your answer if it is the case that it has not yet come into operation?

I may correct it so far as this, that it is the general impression that it will be inoperative.

1737. Lord *Penryhn.*] Did you give evidence about the pollution of rivers before the Committee on Pollution of Rivers?

Yes, in 1866, which appears in the 1867 Report.

1738. I mean a Committee of this House in 1873?

No, only before the Commission.

1739. The pollution at Leeds is very great?

Yes.

1740. But there has been found great difficulty in carrying out any measure of prevention?

Yes.

1741. You have mentioned the case of that brook where the attempt entirely failed?

Yes.

1742. Duke of *Northumberland.*] In your plan, as laid down, of Conservancy Boards, would there not be great danger of these separate jurisdictions clashing?

My object in making the suggestion was, that I thought we should get a proper attendance, and that the interests would not clash; all the interests would be so fairly represented; the chairman might probably be the chairman of quarter sessions, and would have an influential voice, so as to control partisanship; having also corporations represented by their mayors up to 100,000 inhabitants, with the addition of an alderman for every additional 100,000 inhabitants, and having local boards of 10,000 inhabitants and upwards represented by their chairmen, we should get such a representation, that all parties would take a fair and comprehensive view of questions brought before them. I think by limiting the Commissioners to mayors and aldermen and chairmen of local authorities, together with the representatives of navigation interests, we should get such a body as would work together harmoniously for the general good.

1743. But, as I understand, for the different catchment basins you would have different authorities, having power to act within their own district; now, do you expect to have a harmonious action on the part of the representatives of the different catchments commissions, all of whom have power in their own districts?

I think the two interests could not clash. Speaking of the two basins which I am more immediately referring to, the Aire and the Calder, I do not see how the two bodies could clash.

1744. Passing to that district below your jurisdiction, say Rawcliffe, the river there assumes an entirely different aspect from what it does in the Aire and Calder district?

No corporations exist down there, and to that extent they would be different districts; no manufacture goes on; it is an agricultural district.

1745. The

1745. The natural conformation of the district and the features of the river assume entirely different aspects?
They do; it is a flat plain in the lower districts.

1746. At present the drainage of that district is, if I recollect right, entirely a question of the proprietors?
It is.

1747. The cloughs of which you were speaking just now are maintained at the proprietors' expense?
Yes.

1748. The condition of things is perpetually varying from the crumbling in of the banks and the alteration of the course of the river?
Yes.

1749. And the works are very expensive which are required to maintain the banks?
I should not say that there has been much money spent on their maintenance; they are very much neglected. Originally for their construction large sums would be spent.

1750. Would you leave that still throughout the whole course of the estuary, and the Humber; would you leave the works necessary to maintain the present course of the river, as they are now, in the hands of private proprietors?
No; and that is the reason why I propose mainly that the country magistrates should be represented, and have a considerable representation, because they are generally landed proprietors, and why, I also say, that the expenditure should come out of the county rate. You would have to commence your works at the lower end, about the town of Rawcliffe (because you must relieve the lower end first), and by so doing you are not merely benefiting the land, which is there immediately flooded, but you are relieving the upper districts at the same time; therefore, I say, tax all.

1751. Does it not occur to you that interests so various, and under such varying conditions, should be submitted to one central body?
I quite feel that there might be, and no doubt there would be, that difficulty to contend with; but then you can after all only make the best arrangement, and some one must probably feel aggrieved; but I consider that all parties would feel it the best representation in one particular basin that we could have.

1752. Marquess of *Ripon.*] Do you think it would be possible to confine under one body all the various rivers which contribute to make the Ouse where it becomes the Humber; the Calder, the Aire, the Wharf, and the Ure, and all the other rivers extending over an enormous district; do you think it would be possible to confine them under one jurisdiction?
I think not; the interests are too great. Take the Wharf; that is an agricultural district, and the landed proprietors are the only parties interested in the river; it is a navigable river to a slight degree, but not much. Taking the Aire and Calder; these rivers have large manufactories and an important navigation upon them, and also a landed interest.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Thursday, 7th June, Twelve o'clock.

Die Jovis, 7° Junii, 1877.

LORDS PRESENT:

Lord President.	Viscount Eversley.
Duke of Northumberland.	Lord Stewart of Garlies.
Marquess of Ripon.	Lord Meldrum.
Earl of Sandwich.	Lord Penrhyn.
Earl Cowper.	Lord Somerton.
Earl Stanhope.	Lord Winmarleigh.

The LORD PRESIDENT, in the Chair.

Mr. FRANCIS THIRKILL WHITE, is called in; and Examined, as follows:

Mr. *F. T. White.*

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1753. *Chairman.*] I believe you are Clerk to the Commissioners of the River Witham?

Clerk to the General Commissioners for drainage by the River Witham.

1754. And how long have you occupied that post?

Since the 22nd of October 1842.

1755. What is the size of the Commission; how many Commissioners are there?

Thirty-three; 31 Commissioners, and the Mayors of Lincoln and Boston.

1756. And what is the area over which that Commission has jurisdiction?

126,768 acres 2 roods 4 perches. That is dated 15th August 1830.

1757. Have you any idea of the value of the property which is within that jurisdiction; what does it represent?

Low-lands and grounds on both sides of the River Witham, between Lincoln and Boston.

1758. And what are the Acts of Parliament under which you act?

The original Act was an Act of 1762, 2 Geo. 3, c. 32.

1759. And what is the length of the river; it goes from Lincoln to Boston, I think?

From Lincoln to Boston, 32 miles.

1760. That is the extent of your jurisdiction?

The oath of office is through the borough of Boston to the sea, from the High Bridge, in the city of Lincoln, through the borough of Boston, to the sea; therefore it has always been held that the General Commissioners, although from the grand sluice it is not immediately within their jurisdiction, have an interest in the outfall, and they have done works in that outfall.

1761. And what effect upon the navigation of this district has the increased drainage of the country had?

A 5-feet channel under the old Acts was reserved, and by a later Act a 5-feet depth of water in that channel for navigation purposes.

1762. But the drainage of the country would naturally bring down a large quantity of water with the navigation?

Yes.

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1763. And with greater rapidity?
Yes.

1764. Have you found any difficulties attending that?
There are two internal navigations; there is one from Sleaford, joining with the river, and there is also particularly an internal navigation through the city of Lincoln, under the Horncastle Act.

1765. And are you subject in this district to very great floods?
Not generally; last winter there occurred a very unusual flood, such as I never recollect having occurred before.

1766. Marquess of *Ripon.*] You had a certain amount of flood in the year before also, had you not?
Some.

1767. Not to the same extent as last winter?
Nothing like it.

1768. Still there was a flood the year before?
I was trying to remember at what point in the Fens there was some.

1769. We had some in my part?
Yes.

1770. *Chairman.*] What is the navigation capable of accommodating; barges?
Barges.

1771. Of what size?
Drawing 5 feet water.

1772. And it was for that purpose that the depth of water, it was stipulated, should be 5 feet?
Yes, through the city of Lincoln, as I was explaining; it goes up from Horncastle through Lincoln, and through the Foss to the Trent, and for that purpose a certain amount of water is kept up through the city of Lincoln for those navigable purposes.

1773. And what district contributes to your Commission; what amount of property near contributes to the expenses of keeping up your Commission?
The whole of the six districts within the acreage that I have stated.

1774. How do you get at the rate that is put upon the district; a rate is levied upon the district, is it not?
It is an acre tax.

1775. Whether the property is near the navigation or whether it is distant from it?
Yes, quite irrespectively of the navigation.

1776. You take a certain sum which you require for expenses, and then levy that over a certain number of acres?
For the purposes of drainage.

1777. I mean quite irrespectively of whether the district is more or less benefited by the works which you execute?
The funds are applied in maintaining the drainage works; it is assumed that benefit is conferred.

1778. Lord *Penrhyn.*] Is it levied on acreage solely, and not with reference to the value of the land at all?
Originally there was a distinction, but now it is all 1 *s.* an acre.

1779. Whatever the value of the land is?
Yes, an equal acre tax.

1780. Viscount *Eversley.*] And whatever benefit the land derives from it?
Yes; there is a permanent acre tax under the original Act, and a terminable tax in addition for improving the river between Bardney and the grand sluice at Boston under the Act of 1865, which will terminate in 1900.

1781. *Chairman.*]

1781. *Chairman.*] And what is the nature of the works which you have executed upon this navigation?

The grand sluice was originally erected to stem the tides at Boston. Upwards from that point the river has been progressively deepened; that was under the 1762 Act. At that time there were Commissioners of Navigation as well as Commissioners for Drainage. Then the embankment of the river not being completed, a company of proprietors of the navigation was formed, who completed the embankment, and a sum is now paid out of the taxes to that body, or rather to the railway, their successors, in respect of money laid out in completing the embankment of the river under the Act of 1812. That interest of about 100,000 *l.*, I think, with the interest upon the original securities of the Witham drainage, absorbs the whole of the taxes, with the exception, I think, of about 200 *l.* a year; I think that is what I have estimated it at.

1782. Is it all one water-shed that you deal with?

There are two sides of the river, and on the right bank of the river the higher land is at some distance from the river; on the left bank of the river there is, as it were, a narrow fringe of low lands all the way down until it broadens out, 10 miles from Boston, into three fens which constitute the fourth district, about 60,000 acres.

1783. In what part of that district are you most subject to floods; I mean in what part between Boston and Lincoln are you most subject to floods of the River Witham?

Up to 1867 certainly the east fen part of the fourth district was most liable to floods. In 1865 and in the following year the River Witham from Bardney to Boston was deepened under the Act of 1865. Two years afterwards powers were obtained under another Act for improving specially the drainage of the fourth district, and powerful engines were put up by Sir John Hawkshaw in the centre of that district, about eight miles from the sea, which has altered the state of that district entirely. Before that time the lower part of the east fen was most subject to floods about 10 miles to the north-east of Boston.

1784. Marquess of *Ripon.*] In fact the fourth district, of which you are now speaking, does not drain into the river properly so called?

Its outfall is by the Hobhole drain, about four miles below Boston; that is not the River Witham proper.

1785. *Chairman.*] And the floods previous to 1865 were caused by the river not being sufficiently deep?

Yes, certainly the river was in a very imperfect state, the bottom of the river, that 23¼ miles between Bardney and Boston.

1786. Then had the conservators of the river no power to deepen it?

The Commissioners had power, but before that Act they had no money.

1787. You then got an Act in 1865 to enable you to raise the money; when you raised the money, then you deepened the river, and the floods have disappeared to a great extent?

Yes, the works under that Act have been most beneficial, and are a great benefit at this moment.

1788. And are those the works you speak of as having been erected under the direction of Sir John Hawkshaw?

I mentioned his name in connection with the 1867 Act; but under the Act of 1865 also he advised works and reported upon them.

1789. Then, as far as your experience goes, have the works which have been undertaken by the conservators been such as to prevent, to a very great extent, if not altogether, the floods?

I think they have prevented them, as far as has been possible, with the existing capacity of the channel of the river.

1790. That is rather limiting the answer; but you think that as long as the river is so narrow it would be impossible to prevent floods?

I think it would have been better if the banks had been placed originally at some distance from the river, so as to allow the waters to retire and flow, instead

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of being immediately on the brink of the river on each side; but the river now has a flat bottom all the way from the grand sluice to Bardney.

1791. Marquess of *Ripon.*] Is it not a fact that there was something like 40,000 acres of land under water at the beginning of this year?

I should not have thought 40,000 acres within the taxable limits of the Witham.

1792. I was speaking then of the whole range of the Witham; there was a very large amount under water for a great number of weeks?

A very large amount was under water for a great number of weeks; I should not have thought so much as 40,000 acres.

1793. *Chairman.*] Do floods take place outside your jurisdiction?

Yes, above Lincoln; that is outside the taxable jurisdiction altogether, and the city of Lincoln itself.

1794. Between Lincoln and Boston no floods take place outside your jurisdiction; the area which you include within your jurisdiction is the only area there which is subject to floods?

I think the taxing limits extend over the whole of the low lands bordering the river, but it may have exceeded those taxable limits up to Lincoln.

1795. Having the experience that you have of the Commission, is it your opinion that the Commission has worked satisfactorily with regard to the work that it has had to do of keeping down the floods and maintaining the navigation?

I certainly think so; those works under the Act of 1865 are a proof of it; they were most economically conducted; the first contractor failed; the General Commissioners then took the works under their own hands, and they executed the works for 10,000 *l.* less than the money named in the Act of Parliament; they have actually borrowed 10,000 *l.* less than they had power to raise by the Act of 1865, and I believe I may say that they have executed all the works prescribed by that Act.

1796. Then you would not desire to see any alteration in the constitution of the Commission?

I do not think it could be improved, having regard to the nature of the district, and the character of the Commissioners who are large landowners, and some of the large landowners who attend, from distance of residence, occasionally only, have power by the original Act to appear and act by deputy, renewable every three months.

1797. And how was the Commission constituted at first?

Elected by the separate districts.

1798. First of all you must get the districts; how do you get the districts mapped out; is that by the original Act of 1762?

It is by proprietors and tenants; that is, in general terms, by owners and occupiers that the District Commissioners are elected.

1799. But I want you to tell us how this part of the country was mapped out into districts; how were the districts established?

By the original Act passed in 1762 the country was mapped out, and the various districts described by metes and bounds, were carefully described in the Act of 1762.

1800. Is 1762 the earliest Act relating to this navigation?

Yes, it is the earliest Act.

1801. And that Act mapped out this country?

Very carefully, after several reports and meetings of the principal landowners in the county, held at Lincoln, for several years previously, and various engineering reports antecedently to that time, commencing as far back, I think, as 1736.

1802. Then how are the Commissioners appointed; you say by owners and occupiers?

Owners and occupiers appoint the District Commissioners; and then the District Commissioners elect General Commissioners.

1803. And

1803. And which is the working body who carry out the works?
The General Commissioners are the working body for the main drainage; but the District Commissioners have the management of interior smaller works. In such cases, on the River Witham, in the first district particularly, where they have steam-engines, the District Commissioners manage those.

1804. The District Commissioners appoint General Commissioners out of their own body; is that so?
Not necessarily.

1805. What is the qualification required to be a General Commissioner; could anybody be a General Commissioner who was not a District Commissioner?
Yes; it is not limited to District Commissioners.

1806. Duke of *Northumberland.*] Do the District Commissioners and the General Commissioners ever clash?
No, I think not. In the fourth district they acted most harmoniously in obtaining that Act of 1867, and I have no recollection of their clashing, excepting now; there are some questions raised at this moment in consequence of this flood, as to the liability of the General Commissioners to maintain certain banks in consequence of this flood, and the question may arise there.

1807. *Chairman.*] What I want to get is this, if you are able to give it to us, the exact duties of the General Commissioners, and what portion of the country they have under their own immediate supervision; and then what are the duties of the District Commissioners, and what part of the country they have under their supervision, and which of those bodies deal with the funds?
The General Commissioners have the jurisdiction of the grand sluice and of the river by their surveyor, and scour out the works; there are now works, shoals ordered to be removed on the bed of the river itself on the land side of the grand sluice.

1808. That is by the General Commissioners?
That is by the General Commissioners. They will have to pay for that work out of the funds remaining under the Act of 1865, their funds in the Witham proper being so exceedingly small. Then the District Commissioners have the management and control of banks, and drains, and steam-engines generally, where such steam-engines exist, on both sides of the river downwards, having their respective outfalls into the river on both sides.

1809. Marquess of *Ripon.*] And they have separate powers of taxation?
They have separate powers of taxation.

1810. *Chairman.*] Then is there one rate, or are there two rates?
There is one rate maintained for the Witham proper by the General Commissioners; there is another additional rate, the terminable one, which I mentioned before, under the Act of 1865. Those are the General Commissioners, and those are all their funds. With regard to the District Commissioners they have certain ordinary rates, and they vary as to their amount, for the maintaining of what may be called their local interior drainages, independently and irrespectively of the general tax paid to the General Commissioners.

1811. Then, in fact, there are three rates; there is the original rate which you speak of as being a small rate, which the General Commissioners have power to deal with; then there is the rate which they have power to levy under the Act of 1865, and then there are the District Commissioners who, for the purposes of their own works which they construct, have also the power of levying another rate?
Yes, that is so.

1812. Earl of *Sandwich.*] Do I rightly understand you that the District Commissioners of No. 1 do not interfere with No. 2?
No, they have separate Acts for their separate fens. For instance, the first district has several sub-divisions. The Witham drainage consists of six districts itself; within those districts are several sub-divisions for these local purposes which have separate Acts; and they have separate rates; sub-divisions of the district I will call them.

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1813. But these districts are all independent of each other; they all act independently?
They all act independently as far as regards the districts.

1814. And then you have the main body over them?
There is a power of control in the General Commissioners over the whole of them, but practically that is not exercised excepting at the river itself; it is not exercised as to taxation at all.

1815. Duke of *Northumberland.*] Do I understand you that each of these sub-divisions has its own Act and its own rate?
Yes.

1816. Marquess of *Ripon.*] And the General Commissioners have no jurisdiction over these District Commissioners?
There is a power of control in all these local Acts reserved to the Commissioners, I think your Lordship will find, but practically I do not think it is exercised.

1817. Will you give us the number of these smaller districts, if you please?
In the first Witham district, I find, I think, seven sub-divisions.

1818. What is the area of the first Witham district?
Twenty-four thousand five hundred and forty-four acres.

1819. *Chairman.*] And then that district is sub-divided again?
That is sub-divided into eight; I reckon eight of them.

1820. But now does your experience lead you to think that a system that divides the country into so many districts, and which again sub-divides each district into so many smaller districts, works satisfactorily?
In the fourth district the General Commissioners act for the fourth district as to the main drains in that district, which is about 60,000 acres; that they have administered very satisfactorily. The interior drainage, the smaller dykes or drains in that fourth district, are managed by another set of interior Commissioners, similar to those in the other districts.

1821. But as I gather from what you have told us, the first district is divided into areas of something like 3,000 acres each sub-district?
Yes, they must be something like that; they vary in quantity, but are small in extent.

1822. It is 24,000 acres, and it is divided into eight districts?
Yes, a varying quantity.

1823. Who would look after each of those sub-districts; that 3,000 acres?
They have local Commissioners at present, and local surveyors.

1824. Are those local Commissioners and local surveyors appointed by the District Commissioners of that particular district?
Yes.

1825. Marquess of *Ripon.*] There are no District Commissioners for the different Witham districts. You have been talking of two different classes of districts; the districts which we may call Witham districts first, second, third, &c.; and also the smaller districts which are represented by the separate Commissioners. I am right, am I not, in thinking that there are no separate Commissioners, separate from the General Commissioners for the Witham districts?
The sub-divisions of the district have all sub-division Commissioners.

1826. And the next body above them is the General Commission?
Elected by those sub-division Commissioners.

1827. *Chairman.*] Then there are a certain number of Commissioners for the sub-divided districts, we will say, for an area of 3,000 acres?
Yes.

1828. Then have the Commissioners who deal with that area of 3,000 acres the power of taxation for the purpose of keeping up works?
Yes,

Yes, within their respective smaller area each one. There are eight concurrent bodies exercising that power by the side of one another.

1829. Not concurrent; eight taxing bodies who are acting independently?
Who are acting independently.

1830. Then in No. 1 district there are eight taxing bodies?
There are.

1831. And the rate is levied over each small district?
According to the wants of that special locality.

1832. Lord *Penrhyn.*] Are those different eight districts all subject to a general rate under the General Commissioners?
They are all subject to a general rate, and the river finds a common outfall.

1833. And that general rate is in addition to their own district rate?
Yes.

1834. Earl of *Sandwich.*] Is there any appeal against a rate?
I have never heard of one.

1835. They vary very much, do they not?
In some parts there is no maximum fixed. In other parts it is fixed in the event of accident with the consent of owners, and in others it is "with the consent of owners no limit," and in other cases "taxes to be such as to the trustees shall seem fit and reasonable."

1836. Marquess of *Ripon.*] And in some cases there is a limit to the amount which can be levied from the occupier, is there not, and any excess of that falls entirely upon the owner in some cases, does it not?
Yes. I find in one case "in the event of accident, a further tax not exceeding 10 *s.* per acre with consent of owners."

1837. Upon the owners?
Yes; that will be in addition to the occupiers; that seems to be meant to meet emergencies.

1838. Lord *Penrhyn.*] Is there any limit to the general tax by Act of Parliament?
Yes.

1839. What is that limit?
In the first district three parishes are 2 *s.* 6 *d.*, eight parishes are 2 *s.*, and three parishes are 1 *s.* 6 *d.* In the first district, also, there are what are called dale lands; seven parishes, having dale lands, 2 *s.* 6 *d.*, and two parishes 1 *s.* 6 *d.*; that is an acreage tax.

1840. This rate, therefore, varies in different parishes in the amount to which the rate is limited?
Yes.

1841. Does that depend at all upon the benefit to be derived by the navigation works. Just now you were asked a question as to whether the rate was in any way dependent on the benefit to be derived from the works, and I understood you to say "No; it was only on the acreage;" but by that it appears that in different parishes there is a limit to the different rates varying in amount?
That was the standard originally fixed.

1842. Did that depend upon, or in any way seem to be affected, by the probability of the benefit to be derived in those parishes?
Certainly.

1843. *Chairman.*] Has the question of the storage of water ever come under the notice of the Commissioners with a view of supplying the districts?
For the use of cattle in dry seasons, holding up the water is found to be useful, and there are tunnels out of the river at certain points where the water is distributed over the fens for the use of cattle in dry seasons.

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1844. Is the river advantageously situated for that purpose?
Yes. With regard to the fens, a considerable quantity of water is taken in at Dog Dyke Tunnel on the fens below Tattershall, and at other points too.

1845. That is done always?
When required, under the direction of the surveyor.

1846. Marquess of *Ripon.*] I should like to ask you one or two questions. You have explained to the Committee that the jurisdiction of the Commissioners does not extend above Lincoln; that is so, is it not?
In answer to the question, I will read a few lines from the Preamble of the Act of 1762: "and which said lowlands" (described near Branston) "are bounded as follows; that is to say, from 20 yards below the north end of Sincil Dyke, in Lincoln, to Kyme Eau, by the River Witham on the north;" those are the boundaries of the first district.

1847. Then the jurisdiction of the Commissioners does not extend above that point that you have mentioned; the Commissioners in the city of Lincoln have no jurisdiction over the Upper Witham?
They have jurisdiction over Bargate Sluice.

1848. But above Bargate Sluice they have no jurisdiction?
No, but that point is above Sincil Dyke. There is a weir at Little Gowt, and at Great Gowt a tunnel under the River Witham.

1849. Therefore the whole of the Upper Witham above Bargate Sluice is beyond the limits of the Witham drainage?
Yes.

1850. And they have no control or authority over that part of the river?
Not any.

1851. And the course of the river from its source down to Bargate Weir is not much short of the distance over which the Commissioners have jurisdiction?
It is longer.

1852. In fact the Commissioners have jurisdiction over less than half the whole course of the river?
Down to that point it is the Commissioners of Sewers who have jurisdiction.

1853. I think that under the Act of Parliament the Commissioners are bound not to let more than a certain amount of water through Bargate Weir?
They are to allow as much water as can be passed through without prejudice to the lands east of Lincoln, but subject to the control of the General Commissioners.

1854. Consequently the General Commissioners are bound under that Act of Parliament not to let more than a certain amount of water through that weir?
No, they have a discretion.

1855. But it is a discretion which is regulated by the requirements of the land below Lincoln?
But still they have power to allow further water to pass if they think fit.

1856. Is it not a fact that they do consider themselves bound not to allow a sufficient amount of water to pass, and that the floods at Lincoln this year were due to this; I am not blaming the Commissioners; I am one of them; but is it not the fact that they have to look not to the interests of the city of Lincoln but to the lands below Lincoln?
Practically, all that was done at Lincoln was that one of the three sluices was down in the great flood, the central one, that was all; the two side ones were free and open; the central one was down, and the other two were up.

1857. At that time a great part of the city of Lincoln was under water, was it not?
Yes.

1858. I am not in any way blaming the Commissioners, but it is a fact that that was the case?
That was the mode in which their discretion was exercised.

1859. With

1859. With a view to the protection of the lands below Lincoln?
Yes; and still affording as much protection as possible to the lands above consistently with their duty.

1860. The words of the Act of 1812 are: "In order to prevent as much as possible any injurious accumulation of water, whenever the surface of the said River Witham shall rise to the height of six inches above the gauge low-water mark hereinbefore mentioned, that then the said doors or sluices in the said weirs at Stampend and Bargate Drain, or either of them, shall be drawn, and shall remain open to utter such additional quantity of water as may be found can be received and passed to the sea without danger to the banks, or prejudice to the drainage of the low lands lying east of the said respective sluices;" and then, lower down it says: "Provided, nevertheless, that the said gauged mark shall not restrain the said General Commissioners of Drainage from suffering the passage of any further or larger quantity of water, whenever they judge it fit and expedient so to do." So that they could have raised the central sluice if they had thought fit.

1861. But "fit" there means having regard to the requirements and the safety of the district below?
The words of the Act are: "Such additional quantity of water as may be found can be received and passed to the sea without danger to the banks, or prejudice to the drainage of the low lands lying east of the said respective sluices." So that that is a full discretion upon the reading of the whole.

1862. But their discretion is limited by the words you have last read?
I think that the words allow a full discretion, but that is the mode in which they exercise it.

1863. Do you consider that the great number of small district commissions, which you have explained to the Committee, work satisfactorily?
I have not much acquaintance with the actual working of them, but I have understood that some of the main drains have not been kept up as to the banks so efficiently as they might have been; I have no authority for saying that, but I have heard it.

1864. Lord *Penrhyn.*] How often do these General Commissioners meet?
About eight or nine times in the year, I think. The annual meeting is always in July.

The Witness is directed to withdraw.

Mr. JOHN THOMAS TWEED, is called in; and Examined, as follows:

1865. Marquess of *Ripon.*] You are Town Clerk of the City of Lincoln, are you not?
I am.

1866. And you are also secretary to a committee appointed last January, consisting of landowners and others interested in the district of the Witham?
I am.

1867. And I think you are also connected with some of these local jurisdictions?
I am; with Branston, Potter-Hanworth, and Nocton.

1868. Those three parishes being one of these districts?
One of these smaller districts. It has a secretary, or clerk, manager, engineman, and under workers; it has an engine for pumping into the Witham, and it carries on its duties by six Commissioners, who are appointed by the owners and occupiers of that district.

1869. Before we come to that district, I should ask you this: you are acquainted generally, I believe, with the whole district of the Witham?
I am; Lincoln being in the centre, as it were.

1870. There were serious floods last January, were there not?
Very serious indeed. A very large portion of the city of Lincoln was under

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water; between Lincoln and Boston, there were at least 25,000 acres of land under water, entirely within the jurisdiction of the Witham Commissioners, and there were, I believe, about 15,000 acres of land above Lincoln, under water also.

1871. Those latter being out of the jurisdiction of the Witham Commissioners?

Out of the jurisdiction of the Witham Commissioners. And there have been in my time, within the last 20 years, some serious floods; one of them, I think, about 20 years ago, almost as serious as the one of this last year, which was extremely prejudicial and injurious, not only to the trade of Lincoln, but also to the whole neighbourhood.

1872. And there were floods to a less extent the year before?

Yes.

1873. Was the city of Lincoln affected by those floods?

Yes, a portion of it was under water the year before.

1874. Do you consider that the flood of last year was seriously injurious to the owners of property?

Very seriously indeed, and injurious to health. Some of the streets in Lincoln were really a kind of canal; the water running out of the Sincil Dyke over the banks and down the streets as if they were canals.

1875. Will you state to the Commissioners shortly, the steps which were taken in the county in consequence of these floods?

The Corporation thought that it was high time that something should be effected for the purpose of preventing the occurrence of these floods. They, therefore, through me, asked a number of gentlemen as a deputation to go to the Commissioners at Boston, and represent all this to them, which we did. We went to the Commissioners, and the Commissioners told us that they were anxious, of course, to remedy this evil, but that they had not got the money; that they could do nothing; that in effect, the city of Lincoln and the deputation were the persons, if I may say so, to submit to them a scheme as to what ought to be done to remedy or prevent the floods within their district, at which the deputation rather smiled, and said, "You have got the control; you are receiving rates and taxes from the whole of this district; you are, we consider, the persons, in effect, to inaugurate a system." They said they could not do so. Then a number of gentlemen met together for the purpose of seeing whether something could not be done for the purpose of remedying the evil.

1876. A meeting took place last January at the Guildhall, in the city of Lincoln?

Yes; and I believe that the feeling of the persons who have really well considered this matter is, that the jurisdiction of the Witham Commissioners is really too small; too limited; in fact, that it does not represent the area which is flooded; that the whole matter ought to be taken up by one body from the source of the River Witham to the sea, that is the Upper and the Lower Witham. The Upper Witham and the Witham join at Lincoln.

1877. The Upper Witham is under the jurisdiction of Commissioners of Sewers?

Yes, under the jurisdiction of Commissioners of Sewers, which has a too limited jurisdiction. (*The Witness explains it on a map to the Committee.*)

1878. You say there were a considerable number of acres under water above Lincoln, independent of the town of Lincoln itself?

Yes, I believe about 15,000 acres.

1879. To what do you attribute the floods in that part of the district?

There were perhaps I may say two causes. The Upper Witham is not capable of uttering all the water which comes down in flood times; they keep improving the Brant and straightening it; the general improved drainage of the land causes the water to come down very quickly, and the Upper Witham has not sufficient capacity to hold it; when it gets to Lincoln it is held

held up by the Bargate Weir, which the Commissioners keep up to a certain level; then there is the High Bridge, in the city of Lincoln, which further impedes its flow, and then there are the locks at Stamp End. The lands therefore above Lincoln get flooded. If it was not for its being stopped these floods would make the land below Lincoln even worse than it is now, but the flood waters are held back to a certain extent by these obstructions.

1880. As things now are, if the Witham Commissioners were to let more water down, is it not possible that the lands below Lincoln would suffer?
Yes, suffer even more than they do now.

1881. To bring you back to the history of the matter, in consequence of the meeting which was held at the Guildhall in Lincoln, a committee was appointed of landowners and occupiers, was there not?
Yes, of landowners and occupiers through the whole district for the purpose of taking this matter into consideration.

1882. That committee set to work at once?
At once, and employed Sir John Hawkshaw to go over the whole district, and to devise a remedy for preventing the recurrence of the evil.

1883. The instructions of Sir John Hawkshaw were, to look at the matter as a whole, affecting the whole river from the source to the mouth?
Yes.

1884. This Committee have no power, of course, of rating anybody?
No power whatever of rating anybody.

1885. They entered into a guarantee, I think, for the expenses?
They did.

1886. Looking to be repaid if Parliament should approve of any scheme that might be afterwards proposed?
They did.

1887. Perhaps now you would explain a little more in detail the working of the smaller district commissions of which you have personal experience?
The General Witham Commissioners, of whom I think there are 30, sit at Boston, which, as your Lordships will see, is quite at the end of the River Witham, and no doubt the persons who live nearer there are persons who generally attend. Each of these districts is generally divided, I think, into between 5,000 and 6,000 acres of land; they have their particular works under their particular jurisdiction; they levy rates for the purpose of keeping up those interior works. The works consist usually of delphs which catch the water, an engine and pumping station, and the flood waters are pumped into the River Witham by an engine from the delphs.

1888. A "delph" being a large drain, is it not?
A very large drain, with banks on each side. Those delphs have been constructed for many years, and are in a very rotten state. The rates for the purpose of doing these works are very heavy indeed, and it would be almost impossible, I think, to raise a sufficient sum of money to repair those delphs in such a way as to make them really effective; and there are a great number of them in each district, because about every three parishes have separate jurisdictions, that is to say, sub-jurisdictions under the River Witham, and they are nearly all in the same state.

1889. Can you give the Committee any instance of conflict between these small bodies?
Yes; for instance, in one of the parishes at this last flood there was a sluice door between, or rather under one of these delphs, for the purpose of letting the waters off from two districts under separate jurisdiction into the River Witham, and it was a question between the trustees as to whether this door should be raised, or whether it should be kept down; the trustees in one district declaring that it ought to be kept down, or else it was keeping all their land under water, and the others declaring that it ought to be up, and there was a great contest between them, and they were coming to my office almost every day, fighting against each other, as to who ought to have the control of this door.

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1890. Are you aware that there was also a case in which one of the owners desired to break a bank which would have let the floods in on one of the districts?

Yes, I know that that was so.

1891. You have described the taxation as very heavy?

Very heavy indeed; and it must be so where you have this number of separate jurisdictions, because you keep multiplying officers. One set of officers, if you were to take a much larger district, would be able to do the work.

1892. How many of these officers are paid; you have mentioned two or three different officers?

There is the secretary, or clerk, the manager, and engineman, and under-workers; there are about five or six persons, I think, in each jurisdiction that are paid.

1893. Of course not large sums, but still they are paid?

Yes.

1894. And, of course, in the event of a bank breaking, as occurred this year in one of the districts, of course a very heavy rate has to be levied to repair that bank?

A very heavy rate indeed.

1895. Is it within your knowledge that within the district of Dunston and Metheringham the rate falls entirely on the landowners?

Yes, that is to say they are not allowed to tax the occupiers beyond a certain amount; anything beyond that falls upon the landowners. It is so in my district, and I believe in the Dunston district also.

1896. And that amount has been long reached, has it not?

Long reached. The present system is totally unequal to the requirements of the present day; there is no question of that.

1897. Earl of *Sandwich.*] Did I understand you to say that you called a meeting of landowners with respect to this?

Of landowners and occupiers.

1898. What was the meeting for; to petition the Government or the Commissioners?

It was no use to go to the Commissioners; it was for the purpose really of inaugurating an Act of Parliament for the purpose of widening the whole area of these Commissioners.

1899. But they can keep the river in order, cannot they, from Lincoln to Boston?

That is only half the district. We considered that the whole watershed of the Witham above Lincoln, as well as below, should be represented by one board.

1900. From Lincoln to Boston there is power already to widen and keep the river in order?

Yes; but they have not done so.

1901. Marquess of *Ripon.*] Unless they come to Parliament again they have no money?

No, they have no money.

1902. But is it not the fact that there is a mass of water now coming down from the Upper Witham, pressing upon the city of Lincoln, which as things now are cannot be let down, as it ought to be let down, in the interests of the upper district and of the city of Lincoln, without damaging the interests of the district below the city of Lincoln?

Yes, it is; and when there is any amount of rainfall at all, we get flooded to a certain extent immediately.

1903. So that unless you deal with the river as a whole you cannot satisfactorily meet the requirements of the case?

You cannot by possibility prevent the floods unless you deal with the river as a whole, from beginning to end.

1904. Is it your opinion that the landowners in the upper districts and the inhabitants of the lower parts of the city of Lincoln would be willing to be rated for works undertaken with that view?
I think they would, if efficient works were provided.

1905. Earl of *Sandwich*.] How far is it from Grantham to Lincoln where the river flows?
I should think it would be 30 miles.

1906. Marquess of *Ripon*.] There are, of course, a large amount of low lands, what we call fen lands, below Lincoln than above it?
Yes, but there are a great many low lands above Lincoln which were completely under water.

1907. Earl of *Sandwich*.] Arable land?
Arable land.

1908. Lord *Penrhyn*.] Is it your opinion that the floods in the lower districts are principally caused by the floods which come down the Witham, through Lincoln?
Yes, and there are all these drains running into it below Lincoln, that is to say, from the different parishes (*pointing to the map*). They meet at this point, at Horsley Deeps, and back up the water there.

1909. Is there any water which contributes to the floods down here (*pointing to the map*) that comes in from land above, or is at all attributable to the floods of the Witham?
There is a good deal of water which comes from the up-lands which might be taken by the Cardyke to a certain extent; all these up-land waters come down here, and go into the River Witham; we say they ought not to be taken through the fens, but that they ought to be taken by the Cardyke.

1910. My question was more with reference to that fourth district which appears on the map as to the drains which are necessary there, whether that necessity arises from the water of the Witham?
No.

1911. You spoke of the whole river basin being thrown into one area; would it be fair to rate those people in proportion, the same as the others?
My idea is, that they ought to be all rated, but of course there ought to be a sliding scale according as they are respectively benefited.

1912. Then your proposition would be to fix the rate according to the estimated probability of benefit to be derived from it?
Yes, the low land within the watershed I think ought to be rated, some more and some less; a sort of sliding scale.

1913. Marquess of *Ripon*.] Would you propose to put any rate on what you have described as the up-land land?
Yes, a comparatively small amount, because all these up-land lands are drained for agricultural purposes, and if their water is taken through our arteries which we have made, "artificial arteries," I think they ought to pay a sum though comparatively a small sum, and therefore you should bring in the whole of the lands for the rating.

1914. Even though they are not, and never have been, subject to floods?
Yes.

1915. You would still rate them?
I would, certainly.

1916. Can you give the Committee any information as to the state of the village of Billinghay?
The whole of the lowlands of Billinghay were really under water; persons went about in boats to the different houses; many of them were, I believe, kept in their cottages and farmhouses for weeks, I may say, and all their pigs and different things had to be taken upstairs, and you can scarcely imagine the state of things which prevailed there.

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1917. Earl *Stanhope.*] What month was that?
At the end of December and the beginning of January. If you had gone down by the railway towards Tattershall, a distance of 18 miles, you would suppose you were almost on the Atlantic; you could see nothing but water; you could see here and there houses standing six feet in water; stacks in the same kind of way; you could just see the tops of, and just the tops of some willow trees, and nothing but a broad expanse of water for miles, and this within the jurisdiction of the Witham Commission.

1918. Marquess of *Ripon.*] The whole of the wheat crops were destroyed?
Yes, and you saw the mangel-wurzel that was up in heaps all destroyed.

1919. Lord *Somerton.*] How long did it last?
The water was there for a month before it was entirely off, I think.

1920. Marquess of *Ripon.*] The people in that district of Billinghay are, to a great extent, small freeholders, are they not?
Yes.

1921. And they suffered greatly?
Yes, I have heard so.

1922. Many were reduced to apply for parish relief?
Yes, people who were comparatively well off lost their all. It is a place where a large number of little freeholders are owners of it, people who live upon 10, 12, or 14 acres of land, and it was truly pitiable when one considered the money that was lost by these poor people.

1923. The incumbent, I think, got up a very considerable subscription?
I believe he did; and in the city of Lincoln, too, we actually went round in boats and carried people their food; many families were kept a week or 10 days in their upper rooms.

1924. And your principal remedy for this state of things is, first, as I understand, the establishment of one general body of commissioners or trustees, or whatever their name may be, for the whole river?
Yes, for the whole river from its mouth to its source; that is what I think that you must have, one body, and one body only.

1925. Earl *Stanhope.*] Would you include the tributaries of the River Witham in this general board?
Some of the tributaries would come within the general body.

1926. *Chairman.*] Supposing you had the whole watershed, would it be a large district; would it extend over a great width of country?
Not a very great width, but it would be a large district.

1927. But that is what you would recommend, a general body for the whole watershed?
Yes.

1928. Marquess of *Ripon.*] It would be a considerable district?
Yes.

1929. And would include the city of Lincoln?
Yes.

1930. At present the city of Lincoln does not pay to anybody?
It does not pay to anybody.

1931. Lord *Stewart of Garlies.*] Can you state the mileage of the Upper Witham?
I think about 30 miles.

1932. Lord *Penrhyn.*] Can you explain what is the operation of these sluices marked on this map; are they for the purpose of keeping back the tidal waters?
They are for the purpose of navigation.

1933. But they have the effect, I suppose, of keeping back the tidal waters?
Yes, they have that effect as well.

1934. Then,

1934. Then, supposing they were done away with, it would not only injure the navigation but would allow the passage of the tidal waters?
I do not think you could do away with them entirely.

1935. Marquess of *Ripon.*] What is your opinion about the navigation?
The navigation is literally useless now; the railway runs from Lincoln to Boston by the side on the banks of this river all the way, and it really is useless. I do not believe that the Great Northern Railway Company gets sufficient tonnage from it to pay the man who keeps the lock at Stamp-End.

1936. *Chairman.*] Then is the navigation in the hands of the Great Northern Railway Company?
Yes.

1937. Then it is not of use to keep down the tolls on the Great Northern?
I do not think it has that effect at all.

1938. Lord *Penrhyn.*] Is it entirely in their hands?
Entirely, but they are bound by Act of Parliament not to charge more than a certain sum for tonnage.

1939. *Chairman.*] Do you think if the navigation were done away with the Great Northern Company would not raise their tolls?
I do not think they would.

1940. Is it used at all?
Very little.

1941. Marquess of *Ripon.*] It is used to some extent by some Fen farmers, is it not?
Yes, by some Fen farmers, but very little by the general public, if at all.

1942. *Chairman.*] You think no inconvenience would result from its being closed?
No, I do not think there would be any inconvenience from doing away with the navigation.

1943. Lord *Meldrum.*] Do these Fen lands rely on the Witham for their supply of fresh water in the summer?
They would get it from the Witham.

1944. How would you hold up the water, if you did away with the locks, and improve the drainage?
There would always be sufficient for the purpose.

1945. But other rivers get very low indeed sometimes?
The Witham does in very dry summers.

1946. *Chairman.*] I understand that for the purposes of navigation you would close the river, but keep it up for other purposes, including the water supply required by the neighbouring land?
Yes.

1947. Marquess of *Ripon.*] Is it your opinion that the navigation seriously interferes with the drainage?
Yes, I think so. The River Witham, between Bardney and Chapel Hill, is very circuitous; it bends very much indeed, and that prevents the water from running down to Boston very quickly; the great bends in the river have that effect; and it is an extraordinary thing that the river between Bardney Lock and Chapel Hill stands high, when at Boston there appears to be comparatively no great amount of water in the river.

1948. Earl *Cowper.*] Will you tell me whether last year was a very exceptional year as regards floods?
It was an exceptional year as regards flood, but we have had, I think, in my time two almost as bad.

1949. When?
We had one about 18 or 19 years ago. On that occasion I went as a deputation to the Witham Commissioners to complain of the state of the River

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Witham, and of the city of Lincoln, and of the lands between Lincoln and Tattershall.

1950. Do you think, on the whole, that taking it through a large series of years, one year with another, the floods are on the increase, or do you think that the floods of last year were owing to accidental circumstances?

I can scarcely answer that question; I am quite certain of one thing, that we get flooded much sooner now than we used to do.

1951. And what do you attribute that to?

To the improved agricultural drainage above, and to the general drainage of land, and the straightening, deepening, and widening of the Brant.

1952. Do you not think that those who derive benefit from this improved drainage ought to contribute to the measures necessary to put a stop to floods?

Yes.

1953. I suppose the amount of that might be difficult to estimate?

It might be, but still I think that persons might make a calculation by a sliding scale to show how much acreage-rate land in a certain district, or under a particular level, should pay.

1954. And you think in justice they ought to pay?

I think they ought.

1955. Earl *Stanhope.*] What remedy would you propose to prevent floods; embanking?

I think the River Witham would have to be enlarged to a certain extent in parts of it, and I think they would have to enlarge the Sincil Dyke. I think they would have to do away with that Bargate drain, and to make a new cutting outside the city of Lincoln from the Upper Witham to the Lower Witham.

1956. A new cutting would cost some money?

Yes, but if you knew the enormous amount of injury and damage sustained under this last flood you would think that almost anything should be done for the preventing of its renewal.

1957. You do not think that the spring tides hold back the water in the upper part of the river and check it from coming down?

No, we have no real tide; we are shut off from the Trent; so that really we have no tide.

1958. Marquess of *Ripon.*] You have said that you think there should be one Commission for the whole river?

Yes.

1959. Would you abolish or maintain these small jurisdictions?

I should abolish them entirely. I should put them under one jurisdiction. I think there ought to be one jurisdiction, and that one central head should guide and control everything. It would be necessary, perhaps, to have particular districts, and for that central body to nominate and appoint an executive out of persons living in the district, for the purpose of carrying out the necessary works, but there is no doubt that there should be one central body to have the control and supervision of the whole matter.

1960. And any persons acting under them, whether committees or officers, should be appointed by them?

They should be appointed by them.

1961. How would you appoint your General Commissioners?

I think it must be done by the owners and occupiers in the district.

1962. Something in the mode which is adopted at present?

Yes. I think it ought to be a larger area. I am afraid if you have small areas, you will get a kind of local feeling in favour of one particular district.

1963. Do you mean that the electoral area should be rather larger than it is?

Yes.

1964. But

1964. But you would not have the whole of this large district, comprising the whole watershed as the electoral area?
No.

1965. Have you formed any idea of the number of Commissioners?
I contemplate that there should be 50 or 60 Commissioners for the whole district.

1966. To do that, and still more to execute any works which may be necessary to remedy these evils, you would necessarily require the authority of Parliament?
Yes.

1967. Have you considered at all any mode by which the sanction of Parliament could be obtained more easily, and less expensively than by the process of a Private Bill?
I really do not think that you could get all the powers which you would require except by a Private Bill. I question very much whether you would be able to do it by a Provisional Order. I am inclined to think you would be obliged, in dealing with a large question like this, to have something more than a Provisional Order; you want extensive powers.

1968. Even though that Provisional Order were based upon a general Act of Parliament?
I am inclined to think so. That is a difficult question to answer without knowing what the general Act of Parliament would be.

1969. Earl of *Sandwich.*] Who regulates the watershed above Lincoln?
Two or three sets of Courts of Sewers.

1970. All the way from Grantham?
Yes, but there are two or three Courts of Sewers.

1971. Lord *Penrhyn.*] Why do you consider that this would require additional powers, beyond those which are exercised by Local Government Boards under Provisional Orders?
I think you have so many interests to consider, and I think you would require very extensive and special provisions and rating powers. I do not think you would be able to do it under a Provisional Order.

1972. But you have under Provisional Orders the power of taxation in limited areas?
Yes; but that is more general; this is very special.

1973. Lord *Meldrum.*] How far beyond Boston does the tide come up?
It comes up to Boston, but not beyond it. The Grand Sluice prevents it coming any further.

1974. By the outfall drainage of the Witham you would endanger the tide coming up?
No, you would not endanger that. The works might be so made as to prevent the tide from coming any further. It is quite a matter of opinion as to whether it is desirable to have this Grand Sluice at Boston. Some people think it is very much better to let the tide come up. I cannot say that I think so.

1975. If you let the tide come up you would make the water brackish?
Yes, and you would have to raise the banks on each side; and I am afraid that at very high tides we should have a worse flood than now, and the expense would be more.

1976. But still you would have a much better fall by removing the sluice; you would let the floods away?
Yes.

1977. I suppose Sir John Hawkshaw will report on all that question?
Yes.

1978. Lord *Somerton.*] You think it is necessary to keep back the flood tide?
I think so.

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1979. Lord *Penrhyn.*] Do you know how far that sluice operates with regard to the level of the river above the sluice; how far does it operate in damming up the water?
They are bound to keep five feet of water there, you see.

1980. How high up does that five feet level extend?
I cannot tell you; it is a very dead level between Boston and Lincoln; there is only five feet fall the whole way.

1981. Then it would operate all the way down from Lincoln in that case?
That is all.

1982. That sluice being done away with would drain the river to a certain extent, as far up as Lincoln?
Yes, I suppose it would.

1983. Marquess of *Ripon.*] Do you consider that it is urgent that this question should be dealt with as regards this district in the course of next Session?
I do; I think it is very urgent indeed. I think if we were to have another wet winter as we had last winter the injury would be enormous. I think that there is really no time whatever to be lost about it.

1984. The risk of one winter we must run, the coming winter; we were too late to give any notices or get anything done last year, but you would deprecate any further delay?
Any further delay, certainly.

The Witness is directed to withdraw.

MR. CHARLES PRENTICE TEBBUTT, is called in; and Examined, as follows:

Mr. *C. P. Tebbutt.*

1985. *Chairman.*] I BELIEVE you live near St. Ives?
Near St. Ives, at Bluntisham, in Huntingdonshire.

1986. What is your profession?
I am an owner and occupier of land, in the valley of the Ouse.

1987. And how near do you live to the River Ouse?
I am about a mile from the River Ouse. Perhaps I may add that I have been for many years on the board of management of the Middle Level District of the Fens, of which Mr. Fellowes is chairman.

1988. You are a member of that board?
I am a member of that board.

1989. And what has that board jurisdiction over?
That board has jurisdiction over about 130,000 acres of fen land which is not strictly in the valley of the Ouse, but which is a separate district in itself; a distinctly embanked and separate district in itself.

1990. Earl of *Sandwich.*] There is no complaint of floods in the Middle Level?
The Middle Level, I believe, is well drained, but at a great cost.

1991. *Chairman.*] And drained by a Commission?
Yes, under Acts of Parliament.

1992. The same Commission of which you are a member?
Yes. I am a member of a board which is chosen by the Commission of the Middle Level. The Middle Level is governed by a body of Commissioners who appoint a board annually, and that board governs the whole management of the Middle Level.

1993. And does that Commission appoint the board out of their own number?
Yes.

1994. And not outside them?
Not outside them.

1995. Over what area does your power of rating extend?
About 130,000 acres.

1996. And how do you rate that district; is it by an equal rate all over the district?
It is nearly equal, not quite equal. There have been three taxes; the first tax varied slightly; the last two taxes have been uniform taxes.

1997. And at whose will and pleasure was the variation made?
The variation was made under the original Act of Parliament; a fixed amount was agreed upon on certain lands originally; the variation was not very great.

1998. That was by Act of Parliament?
By Act of Parliament; it was embodied in the Act. Since then there have been two further Acts obtained containing powers of taxation, and in the last two Acts the taxation has been on an equal acre rate.

1999. Irrespective of the value of the land?
Irrespective entirely of the value of the land.

2000. Merely at so much per acre?
Merely at so much per acre.

2001. And irrespective therefore of whether the land derives equal benefit with other land in the neighbourhood?
Yes, it was felt that there was no such variation in interest as to justify a variation in tax.

2002. And you say that there is no complaint of the drainage, but that the drainage has been done at a very large cost; what are the works which you have been compelled to resort to?
The works have been making a very large and costly sluice and a new canal or drain, and scouring out older drains. I cannot speak within a small amount, but I suppose that something like from 500,000 *l.* to 600,000 *l.* has been spent altogether within the last 30 years on the district, and the consequence has been that the district is in a perfect state of drainage, and that during the last winter, with some very slight exceptions with regard to internal works which some smaller districts did not attend to, the district was well drained.

2003. You said that you made a new channel; that was parallel, in fact, I suppose, with the old drain?
The great feature of the scheme was that a new cut was made getting a nearer outlet to the sea. Instead of the outlet of the Middle Level into the Ouse being about 15 or 16 miles above Lynn, by this new cut an outlet was obtained into the Ouse about four or five miles above Lynn. The effect of that was, that as the tide ebbs so much lower five miles above Lynn than it does 15 or 16 miles above Lynn, the Middle Level got so much better drainage; that was a drainage through sluices.

2004. Can you give us an idea at all what the rate per acre has been?
It varies; under the original Acts there were powers of internal taxation over certain lands, but you may say roughly 6 *s.* per acre per annum on an average.

2005. Lord *Meldrum.*] Are you making a new sluice now above Lynn?
Yes, a new sluice is now being built under the directions of Sir John Hawkshaw about five miles above Lynn. In consequence of the old sluice failing, enormous siphons were placed in lieu of the old sluice in consequence of the engineering difficulties in the way of making a new sluice at once. The siphons have been found not to be so effectual in their operation, and at present a new sluice is in process of building.

2006. At an enormous cost?
I suppose it will cost 60,000 *l.* This is simply a fenwork. The outlet is into the Ouse, about five miles above Lynn. (*The Witness produces a sketch, and explains it to the Committee.*)

2007. Earl of *Sandwich.*] We have had a great deal of evidence from other witnesses as to the damage caused by the floods from above Bedford down

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almost to Lynn itself; will you explain to the Committee how the original plan of Sir Cornelius Vermuyden had been destroyed by the washes being taken away by the wash proprietors?

Your Lordships will see upon that plan that from Denver Sluice to Earith Sir Cornelius Vermuyden, instead of making one large river competent to carry and discharge the water above Earith from the high lands, adopted another plan. He made a small river about 100 feet wide, still called the Hundred Foot, and then he supplemented it by a large tract of wash-land, about half-a-mile wide, putting a bank against it, and left that district of the washes for the high land water to flow over it, as an addition or supplement to the river which he made; he turned the course of the river entirely, and made an artificial river, but made it avowedly insufficient to carry the high land water, and he supplemented that by this system of washes. I think about 100 years ago, the wash proprietors being incorporated, obtained powers to embank the washes and shut out the water to a certain height, and within the present century, about 50 years ago, obtained further power under an Act to embank it still higher; and the consequence of that has been that the high land districts above Earith, which had nobody to represent them, and, so far as I know, no conservancy at all, have completely lost the power of discharging their water when they please over the washes.

2008. The proprietors of the washes now pay nothing for that property, do they?

The proprietors of the washes, had that property allotted to them originally, subject to this flood. They, finding the floods inconvenienced them, obtained, by two successive Acts of Parliament, the power to shut out the upper district up to a certain height of bank; they have not absolute power of exclusion, but of exclusion up to a certain height, and that exclusion is sufficient to flood the county above the washes.

2009. They had the advantage of this land for all the year, and they had it formerly for only a part of the year?

Yes; there is a sluice at the upper end of the washes which is under the control of another body, the Bedford Level Corporation.

2010. Do the various bodies on the River Ouse act harmoniously together?

I do not know that there is any body that has any jurisdiction from Earith to Bedford.

2011. Then, in fact, nothing is done to improve the drainage of the river?

The river is annually becoming much worse, because the navigation is becoming worthless, and is very slight now; formerly the navigation owners had an interest in keeping some sort of scouring going on above Earith in the locked portion of the river, but now that the navigation is becoming almost worthless, the navigation owners do nothing in the way of scouring, and even the passage of barges along the river, which formed a rough kind of scouring has become less frequent, and so far as I am able to judge, within the last 30 years there has been a very marked deterioration in the state of the river, which, so far as I can see, must be progressive, because there is no jurisdiction, no conservancy, and no person that has any control or jurisdiction over it.

2012. Then what would you suggest now to improve this drainage; would you have district boards or a general board of conservancy, or what?

I cannot conceive how it is possible to separate one part of the river from another; it is a unit from end to end; I cannot conceive how any separate district could act; I think that, as for instance, in the Middle Level, the main drains of the Middle Level are all supervised by the central body, and then each district acts for itself, so this whole valley of the river should have one jurisdiction.

2013. In fact, the whole watershed should be under one jurisdiction?

I cannot conceive that it is possible that the river can be put in a proper state, excepting the whole watershed joins in the contribution. The district immediately affected by the floods would not be large enough, in my opinion, to place the river in a proper state to do the engineering works that would be necessary.

2014. But

2014. But as the extent of the watershed would be very large, would you recommend smaller boards to govern certain lengths of the river?
No, I think there should be one board.

2015. One board over the whole?
One board over the whole, elected probably in proportion to the amount of tax paid; all taxpayers to a certain extent should have the power of voting, and they should elect the board which should have authority over the whole of the river.

2016. Then the board should be chosen from the riparian owners?
I am suggesting that it should be by the whole of the watershed, because I cannot conceive that the narrow district immediately affected by the river could bear the cost necessary to put the river in a proper state.

2017. But any Commissioners appointed at Bedford would know nothing about Lynn; they would not have the local knowledge of the Lynn district, would they?
It really is hardly a case of a local kind. For instance, at the present time, land at Earith, 40 miles above Lynn, is paying taxes towards improvements in the river, to the body who have the conservancy of the river, only to a point about five miles above Lynn. At the present moment taxes are being levied on land 40 miles from Lynn, in order to keep the river in a proper state from the outfall below Lynn to about five miles above Lynn, by a Board called the Ouse Outfall Board, and lands near Earith, are paying that because it is believed that they are interested in the state of the outfall below; I regard the river as an unit, and that you cannot separate it into sections.

2018. You would have a large body of Commissioners then?
I think there should be an uniform authority, going if necessary to the very outfall. In this case there are authorities governing this river, and conserving the river up to Earith, more or less perfectly. The Ouse Outfall Board which conserves it up to five miles above Lynn keeps it in an absolutely perfect state.

2019. Then the floods all arise above Bedford?
The floods arise from the river being in an inefficient state above the point where the jurisdiction of the Ouse Outfall Board ceases. From that point up to Denver Sluice, about 10 miles further, the river is under the conservation of a body called the Denver Sluice Commissioners; they have powers of taxation; they do not keep the river in anything like so good a state as the Ouse Outfall Commissioners, who have the conservation of the river up to five miles from Lynn, but still the river is in a fair state. Then at Denver Sluice commences this arrangement which I have pointed out by which the washes exist, and which have been cut off from the high land. The narrow river called the Hundred Foot River is under the control of the Bedford Level Corporation.

2020. As I understand, you would have one general body of Commissioners to superintend the whole river?
Certainly; as far as Denver Sluice at least.

2021. As to powers of taxation, how would you propose that that should be arranged?
I cannot see how, excepting by the whole watershed contributing, those who are primarily affected paying a considerable tax, and the districts contributing their water paying a small tax.

2022. The floods are affected by the drainage of the uplands, you think?
I suppose the improvements above must cause the water to come down more rapidly.

2023. You know that the water comes down more rapidly now?
I think so.

2024. Lord *Somerton.*] You would tax according to the benefit conferred, in fact?
I do not know that it would be any benefit conferred upon these higher uplands to improve the river; I should tax upon the principle that the uplands use the river; it does not matter to the upper districts, that I

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can see, whether there are floods in the valley or not, and you will not confer any benefit on them I think by improving the river; but as they are changing their system of drainage or sending the water down more rapidly, it seems equitable that they should contribute something. Suppose a farm to be at a level of 100 feet above the valley, it does not matter to that farm whether or not the valley is drained; but if it sends its water down it seems to me that some contribution should be made by it, but it should be very small.

2025. Did I not understand you just now to say that a considerable number of persons were taxed, or rather, to speak more correctly, rated, who were not represented in any way; did I not understand you to say that there was a tax raised on the upper part of the river for keeping the lower part near Lynn in order?

Yes; the way in which they are represented is, by all owners of a certain amount of land that is taxed being Drainage Commissioners, and having a right to vote in the election of the Board.

2026. That applies to the Middle Level only?

The possession of 100 acres is the basis of the constituency of the Middle Level. The basis of the constituency of the Ouse Outfall Board, I think, is 200 acres; it levies a very small tax, the limit of the tax is 3 *d.* an acre. As a matter of fact the owners below 200 acres have no direct security that their views are represented, excepting that they have the guarantee that their interests are the same with those of the owners of a larger amount; so in the Middle Level.

2027. What would you propose as a qualification for the voters if you had one Board to manage the whole?

I should say that the amount of taxation paid should be the rule, not the acreage. I do not see the necessity of a greatly varying rate of taxation; I should have thought there was only need of two rates, one, say, one-tenth of the other, the immediately affected parts paying 10 times as much as the lands unaffected by the improvement; and that on the amount of taxation paid any owners of land up to a certain amount of taxation might be constituted Drainage Commissioners; that seems to have been the universal system in the fens, and so far as I can judge it has worked well; there has never been any complaint from the smaller owners that they were not represented.

2028. Marquess of *Ripon.*] Do you know of any precedent for rating lands that obtain no direct benefit from the works?

The only precedent I know is in connection with highways in parishes; in many cases brooks are kept scoured by the surveyors of the highways, who levy the tax with which they do their work from the whole of the parish, and I believe that there are parishes in which rates are levied for brook purposes upon the whole of the parish; but I think the case of the highways is a fair precedent. I do not know of any case in the fen district.

2029. Lord *Meldrum.*] In fact, under the Highways Act, a surveyor can clean out the parish brook, charging equally the rate upon the riparian owners, whether they are uplands above the brook, or contiguous to the brook?

Yes.

2030. Lord *Penrhyn.*] Is it not on the principle that, if the brook were not cleaned, it would damage the road, the repair of which would then come upon the whole parish?

That does not follow at all; very frequently the overflow from the brooks would not come on the roads, or affect them in any way.

2031. Lord *Meldrum.*] The only way to deal with such a great question as the drainage of a whole valley is to bring in all the lands that drain into that valley for the purposes of rating?

I see no other way; and your Lordship is well acquainted with the case of the Nene, in which an attempt to do it on other principles has failed.

2032. Whatever the incidents of rating may be you can hardly deal with the whole question, it being such a big question as it is, unless you bring in the whole of the land lying within the watershed?

I fear that would be necessary; you would, of course, meet with great opposition

sition from those who did not derive immediate benefit, but I see no hope of its being done except on that principle.

2033. *Chairman.*] Might there not be some persons in that district who derived no benefit whatever, and whose land even was not drained?

There might be some, undoubtedly; but from the nature of things the water which falls upon their land is discharged by them into this main drain, and that is the ultimate basis upon which some contribution is due. It is also true that, throughout those districts, great improvements in drainage have taken place within a very moderate period, which have, as it is believed, discharged the water more rapidly than it used to be.

2034. That is in the case of land which requires to be artificially drained?
Yes.

2035. But it might happen that there were lands that did not require to be artificially drained?
Yes.

2036. But, of course, the water falling from the heavens must go somewhere?
Yes.

2037. They would not be benefited in any way?
They would not.

2038. And your plan would be to include them in a general rate?
Yes.

2039. Because you think you must have one general system over the whole district?
Of course; my suggestion is, that it should be an extremely small rate, and I see no hope of any other system, than the system of the water-shed, being sufficiently capable of doing the work.

2040. Lord *Meldrum.*] The same thing occurred at the time of the making of the great drains of the Bedford Level; a good many parts of the fens were very dry and did not require drainage, and yet they were brought into the same rate of taxation as the other lands when these drains were made; is not that so?
No, I am bound to say that that was not the case. I believe there are cases in which the high lands drain into the fens, into districts, and I do not think the high lands pay taxes. The attempt has been always to shut out that water by means of catch-water drains, as much as possible. In the case of the high lands which occur in the fens, and which are islands, as it were, of high land in among the fens, they do not pay taxes, though their water passes into the fens on each side.

2041. Lord *Penrhyn.*] Does your proposition of taxation involve the alteration of the rate according to the benefit to be derived?
It seems to me that it would be extremely difficult to apportion it in that way. I should apportion it, land above the present flood level, and land below it, taking one rate for one, and another for the other. I think the land primarily benefited by any improvement should be taxed at least ten times as much as land which is merely taxed because it uses the river as its main drainage.

2042. Are the interests of the Bedford Level, and the High Level, and that tract of land identical with those of the owners of land down the River Nene?
In this case the fens would have no relation to this matter.

2043. They would not come within your proposed area?
These fens do pay already to these rivers; where they use the river they already pay. All this fen district pays towards this conservancy of the river from the outfall to five miles above Lynn; there is one system of taxation which covers about 280,000 or 290,000 acres; then from that point to Denver Sluice, ten miles further, there is another system of taxation extending over about 150,000 acres confined to the districts which run into that section of the river, the part of the Middle Level and the South Level together using it just above Lynn,

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Lynn, and then above that the South Level only using it at Denver Sluice, the Middle therefore being exempt.

2044. My question was as to whether they would have a voice in the management of the whole area which would be at all equivalent to their own separate interests?

If, in the River Ouse, these districts which are already under conservancy were included, they then, of course, would have their voice in the management; the constituency there exists, and the funds already exist; they would have to be all incorporated with it if any general Act applying to the Ouse included the whole of the river to the outfall.

2045. Earl of *Sandwich.*] Unless you included the whole watershed you would not get money enough to do your works on the river?

No doubt improvements might be made, but I cannot conceive that the works necessary to place the drainage of the towns on the Ouse in a proper state, and to keep the river in a proper state after heavy rainfall, can be done by the limited amount of land which is flooded on each side of the Ouse.

2046. Marquess of *Ripon.*] Would you give the owners or occupiers in these upland districts, paying a small rate, an equal right in voting with the owners or the occupiers of the fen districts directly affected, and paying a much larger rate?

Equal according to amount of rate, but not according to amount of acreage. I am assuming that if such Cconservancy Boards were constituted, there would be some general duties which would be provided by Act of Parliament as the duties which these boards were to carry out, and that consequently it would be possible to compel them to carry out certain duties which would be laid down for them and defined by a general Act of Parliament.

2047. Would you give them any duties to perform in the upland districts, at all?

It seems to me that in forming such a body everything which formed arterial drainage should be taken by it; everything that would bring the drainage of the arteries or tributaries of a river up to each parish highway authority should be done, so that the whole thing should be completed. In order to complete the transaction it should include not only the main stream of the river, but the main streams of the tributaries, to bring it up to present jurisdiction.

2048. You would follow the tributaries from the river up to their source?

Yes.

2049. And bring them under one jurisdiction?

Yes; it seems to me that that would be equitable.

2050. Earl *Stanhope.*] Do you not think that in some cases Provisional Orders would be advantageous instead of applying for local Acts?

I fear I do not exactly understand the operation suggested.

2051. If a certain part of the river were to be put under a local board, would it not be more expeditious to obtain that authority through the means of a Provisional Order than through the complicated system of applying for local Acts?

I suppose all that must depend upon the powers which are given to this Conservancy Board. If the Conservancy Board has sufficiently ample powers given to it, that seems to me to be a far better thing than any other way of dealing with it. Of course there would be very ample powers required in some cases, to take land for instance, in order to make subsidiary channels and so forth, and I suppose that can only be done by a body having very great and stringent powers.

2052. With regard to the work of the local boards, how often does your board meet?

The board meets when required; I suppose probably about eight or nine times a year; and the board, which consists of 15 persons, sub-divide themselves into a finance committee, and works committee, and so on; they are constantly inspecting and looking after the districts.

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2053. Therefore it is very easy to find gentlemen who will act on these local boards?
We are very fortunate in the Middle Level in having gentlemen who will act on it.

2054. Lord *Stewart of Garlies.*] And unpaid?
Yes, unpaid. Of course they have considerable interests.

2055. Earl *Stanhope.*] How often do you meet to make a rate?
The rate is collected twice a year.

2056. How often do you make the rates?
At the half-yearly meeting of the Middle Level Board; the chairman seals the tax book, and you can then legally enforce the tax.

2057. Have you ever considered whether the railway companies should pay their shares?
They only pay according to the amount of land which they have taken; it is a fixed acreage. The tax is collected under a heavy penalty if it is not paid to the day, and is paid with wonderful accuracy up to a very few pounds indeed every half-year.

The Witness is directed to withdraw.

MR. GEORGE GLADSTONE MACTURK is called in; and examined, as follows:

Mr. G. G. Macturk.

2058. *Chairman.*] I BELIEVE you reside in East Yorkshire?
Yes; I reside at Ryeland-hill, South Cave.

2059. And you are a Trustee of the Market Weighton Drainage and Navigation?
Yes.

2060. And you are Chairman of the Wallingfen Local Board?
Yes. I mention that simply because it is the only occasion where a local board has been created in an exclusively rural district, and it has worked extremely well.

2061. When you say "local board," it is a local board for what?
The local board usual in towns; but we have worked it in a rural district. It is for highway purposes, and board of health, and so on; and it was never thought that it could be applicable to a rural district, but we have made it so.

2062. You are a landowner in that district?
Yes.

2063. When you say that the local board has been set up, under what authority has it been set up?
Under the Local Government Board.

2064. Would you describe how it has been appointed, and what its duties are?
I am more for the trustees of the navigation and drainage. I merely mention incidentally that I am the Chairman of the Wallingfen Local Board.

2065. I quite understand that, but perhaps you will tell us what this local board does?
It maintains the highways in a district where they were in a wonderfully backward state. You would not have thought you were in England if you had gone there before. A Government inspector who had been in Natal said that he had never met with roads so bad in Natal as they were there.

2066. Do you mean that you set up a highway board there?
A local board of health. The Local Government Board granted it to us

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as an experiment. We have worked a wonderful improvement in the district. It was a district without a road in it; there were really no roads in it.

2067. Lord *Meldrum.*] When you say "district," what size was it?
About 8 or 10 square miles of country without a road.

2068. Lord *Penrhyn.*] Where?
Between Hull and Selby. There are 48 townships in that area. It was a fen which, though awarded among 48 different townships, for a period of 80 or 90 years has existed without a road, owing to the provisions for making roads being defective.

2069. *Chairman.*] And then the Local Government Board did what?
They sent down an inspector, and ultimately granted the district.

2070. Have you any powers for dealing with the poor in that district?
No, that is under the Unions.

2071. Then, were your powers exclusively confined to making roads?
We have all the powers of an urban sanitary authority; we have exercised them chiefly in making roads. We are an urban sanitary authority in a rural district.

2072. How come you to be an urban sanitary authority?
We are a board of health; every board of health is an urban sanitary authority.

2073. Lord *Penrhyn.*] Have you adopted the Health of Towns Act?
Yes; the only singularity is that we have applied the Health of Towns Act to a rural district which was in a woeful state. Of course there is always some country in addition to a town, but this is exclusively country. Through this district runs the Market Weighton Canal.

2074. *Chairman.*] And you are a trustee of the Market Weighton Drainage and Navigation?
Yes.

2075. Of what does that consist?
There are 13 miles of artificial canal, the River Foulness, and about 40 miles of lateral drains.

2076. Where does this navigation commence?
Near Market Weighton, and runs to the Humber.

2077. Discharges itself into the Humber?
Yes.

2078. Earl of *Sandwich.*] Have you a map?
I have one on a small scale (*producing it*).

2079. *Chairman.*] What is the condition of the country through which this navigation goes?
It is a very low country, several feet below the level of spring tides, in some places as much as 11 feet below high spring tides, which are banked out by embankments.

2080. Can you give us the date when this navigation was first set up?
In 1772.

2081. And what style of barge can use this navigation?
Half way up the canal about 60 tons can get up; after that they have to diminish the load, and about 20 tons can get up to Market Weighton.

2082. Was this done with a view of navigation only, or for drainage purposes also?
It was done to combine both, and to a certain extent it has done it.

2083. Does this navigation compete at all with any railway?
The tolls are the property now of the North Eastern Railway Company.

2084. Does it assist the drainage of that district?
To a certain extent it does, and probably according to the notions of 1772 it was a good drainage, but not according to present notions.

2085. But

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2085. But has the increase of artificial drainage in that district had any effect upon the navigation in the way of filling it up?
The canal is often in a state of flood, and the lateral drains cannot discharge themselves into the canal, the surface of the land in some cases being only 18 inches above the navigation level, it is utterly impossible to get an efficient fall.

2086. What is the effect of that upon the surrounding country?
Floods.

2087. And is that country subject to floods annually?
Yes; but it is wetness and dampness that prevent its producing its crops, not so much that it is subject to floods; the canal has relieved the land to a great extent of floods, but has not left it in a cultivatable state.

2088. What was the state of that land this last year?
A considerable portion of it was under water; it was an exceptional year.

2089. If the navigation was not considered, if the canal was closed for navigation purposes, would it afford any facility for carrying off the water?
The navigation has to be maintained at a six-foot depth; if that could be done away with there would be an ample fall for all purposes; but we consider that it would not be to the advantage of the country to do away with the navigation; it supplies the want of trade purposes, and bringing manure to the land. At the last annual meeting the question was discussed whether it would be desirable to do away with the navigation, and we decided that it would not.

2090. Would you tell us how your Board is constituted?
We are self-elected.

2091. First of all, how many do you consist of?
There are about 45 trustees.

2092. And do they date back to the year 1772?
The original trustees were appointed then, and they have elected members into their Board by ballot ever since.

2093. And were those original members set out in an Act of Parliament?
Yes, they were really all the owners, of any consequence, in the district; and now every man of any means, of any landed property, is elected as a matter of course; he is proposed and seconded at one meeting, and the next meeting he is balloted for.

2094. But is the Board not limited in number?
I believe not.

2095. What is the general number who attend?
Eight or ten.

2096. Out of a number of 45?
Yes; many of them reside at a distance.

2097. And do they have under their jurisdiction the lateral drains as well as the main navigation?
Yes, they maintain a surveyor, and they have a standing committee of management, and a clerk.

2098. And carry out all improvements?
They carry out no improvements; their Act limiting them to maintain the works as originally set out.

2099. And the works as originally set out were merely the navigation?
They were the navigation and these lateral drains. We hold that we are not enabled to put a spade in anywhere except as originally set out. If we want to effect improvements we have no powers.

2100. But supposing your navigation gets silted up in any way?
We can maintain the canal as a navigation. We are bound to maintain it as a navigation; the railway company contributing.

2101. Then what have you no powers to do?
To cut a new drain, or a new lateral drain. There have been grumblings for

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the last 100 years amongst the proprietors that they were not efficiently drained, and they have gone on grumbling and done nothing.

2102. Lord *Penrhyn.*] Is their complaint with reference to not keeping the lateral drains in a proper state, or requiring fresh lateral drains?

Their complaint was that the existing works did not afford them an efficient drainage; that has gone on for 100 years.

2103. *Chairman.*] Therefore your theory is that you have no power to do any other works than those works absolutely sanctioned and set out by the Act of Parliament in 1772?

Yes; I issued a circular, hearing these complaints, calling the attention of the landowners to the fact that further works were desirable, and I got the report of a drainage engineer; got up a subscription amongst my friends to raise 10 guineas to give to a drainage engineer to give us a report. He reported that nothing further could be done if the navigation were maintained, and he recommended us to make a new cut altogether, parallel with the canal, keeping it exclusively for drainage purposes, whereby an improved fall of six feet would be obtained at a cost of about 10,000 *l.*

2104. What are the expenses you have been put to up to this time?
Simply in cleansing the canal and the lateral drains.

2105. That probably is not a very expensive work?
About 600 *l.* a year.

2106. And where do you get the money to pay for that?
By rate on the land.

2107. On what land?
On about 20,000 acres.

2108. What 20,000 acres would that be?
The original cost was assessed by a field valuation upon the adjoining lands, and that valuation has been followed ever since.

2109. When you say "adjoining lands," what do you mean?
On the 20,000 acres supposed to be benefited.

2110. Twenty thousand acres which were set out?
Authorised to be taxed by the original Act.

2111. But they were specified by that Act?
No doubt the areas were specified, but a field valuation was subsequently made, and each field was charged according to the supposed benefit. It is cut up into most minute allotments; four or five acres a-piece; each field was assessed separately.

2112. Under that Act?
By that Act.

2113. And has that gone on so?
That has been maintained up to the present time.

2114. The assessment is on these fields in the same proportion that was set up in the Act of 1772?
Yes.

2115. Lord *Meldrum.*] Is there any power of increasing that rate?
We are not limited to amount, but we are limited to the objects; we only make a rate every three years.

2116. *Chairman.*] What might it come to per acre?
It is very trifling on some fields, and up to 4 *s.* or 5 *s.* per acre on others.

2117. That is in accordance with the Act of 1772, is it?
Yes. What we want is fresh powers; we were proposing to come for a private Act of Parliament, but hearing of this Committee we decided to wait till the result of the deliberations was known, thinking that we might get our new powers on a cheaper and simpler plan.

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2118. And the powers which you want are powers to make additional drains?

Yes, I think there is plenty of legislation on the subject, but it is not applicable; it is not applied. You can have a Commission of Sewers granted by the Queen on application of one-tenth of the proprietors in any district; you can have a Drainage Board granted by the Enclosure Commissioners, by Provisional Order, on the application of one-tenth of the proprietors of any district; but inasmuch as this district is in the possession of the Market Weighton Drainage Trustees under a Private Act of Parliament, you cannot have another body constituted to drain what is already drained, although imperfectly. I should suggest that all existing drainage trustees should have, as a matter of course, granted to them the powers of Commissioners of Sewers and of Drainage Boards, with an extended area to be granted by Provisional Order, after an inspector has been down in the locality. I think it would be well to establish a system similar to that under which local boards are granted and extended; and that Drainage and Conservancy Boards should be created where none exist, with power and duty of repairing and making new works, under Government Inspectors. I also wish to state that there are about 100 miles of raised bank in East Yorkshire to keep out the tide, and that a great part of this raised bank is under no jurisdiction whatever; some of it is under the control of Commissioners of Sewers, some part under the provisions of Local Enclosure Acts, which work imperfectly, and the greater part is under no control or jurisdiction except the common law. And there has been a decision given this last April in the Court of Appeal in the case of Hudson *v.* Tabor, which has decided (contrary to the prevailing opinion hitherto) that a frontager is not primarily liable to maintain the flood-bank, but that the level behind are liable to contribute. But inasmuch as no Commissioners of Sewers exist, and no Drainage Boards exist, there is no power or machinery whatever to compel contribution from the level; therefore there is need of fresh legislation on that score.

2119. Where have you these sea banks along the banks of the Humber?

A part is in Holderness; and then 70 miles from Hull to York on the Humber, and the Yorkshire Ouse, embanked by earthern banks of from three to seven feet in height; and the River Derwent has banks on both sides, and the River Hull, up to Beverley, has banks on both sides; altogether considerably over 100 miles. I say that these banks are continually breaking through. In my own district of Wallingfen I have seen a thousand acres of land under the tide (I had to give a man a bottle of gin to ride me on his back to get out of it); and this last winter the banks of the Ouse broke, and four square miles of land were under water for a month.

2120. Salt water?

Salt and fresh water mixed. Four square miles of land, I say, were under water for a month. One attorney showed me valuations for damage done to his clients only, to the amount of 1,600 *l.*; the stacks were two yards deep in water; potato pies were covered and rotted. They are now seeking to obtain a remedy against the frontager, who, probably, under this recent decision, will be held not liable.

2121. And who eventually repaired this bank?

The frontager; he made great endeavours to repair it, but he was warned before it broke, and did nothing; and it broke, and eventually he repaired it at a cost of 1,000 *l.*

2122. Lord *Meldrum.*] But dealing with this Market Weighton Canal, would you increase the area of taxation?

We allege that we tax 20,000 acres, while we drain 50,000. I hardly agree with the previous witnesses in the proposal to tax the high lands. I think a man buying land in a valley, buys it at a low price, subject to the natural waters coming down; but if a man on the high land does any work, such as new draining, or opening his drains more, so as to make a new flow, if he does anything to bring the water down quicker, he should be brought in to contribute.

2123. If you make a new cut and enable the water to get off with a six-feet better fall, surely you should bring in every acre of land which is benefited thereby?

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We think we should, but we do not think that the land up above would be benefited at all; 15 feet above Ordnance datum is our limit.

2124. You would take a certain level, and would not go beyond that?
Yes. We say that no land above 15 feet above Ordnance datum would be benefited, unless the man executed works to bring the water down quicker.

2125. Would you still wish to be under a private Act, or would you wish to be under a Local Government Board?
I think that the present trustees should exist with increased powers; that their powers should be continued and increased.

2126. *Chairman.*] I understood you that these trustees are unlimited in number?
I believe they are; practically, they comprise all the landowners in the district; you could not get a better board, I think, by any plan you could devise.

2127. I understand you now, that your number is 45?
Yes.

2128. There is nothing to prevent you from electing yourselves to be 65?
Excepting a qualification of so much a year; I do not remember the amount.

2129. I suppose there would be no difficulty in finding 20 more of that qualification?
It is limited to being a landowner in the district; the present trustees being, as a rule, gentlemen of position; they are not anxious to elect the smaller proprietors.

2130. But I meant, as a matter of fact, your Commission is unlimited in point of numbers?
I believe it is.

2131. It entirely rests with the Commissioners as to the number that they will have on their Commission?
Yes; but each man must be proposed and seconded by an existing trustee, and then he has to submit to a ballot by the existing trustess.

2132. Earl of *Sandwich.*] He must be a landowner?
He must be a landowner, and then take an oath to maintain the drainage and navigation.

2133. *Chairman.*] That oath is under the Act?
Yes.

2134. What other navigation have you besides that canal?
There is the River Humber, which is under a conservancy commission; but I believe they have done nothing, and their duties are with reference to the navigation; they do not interest themselves in the banks.

2135. Is your navigation confined to a water-shed, within which you are the only navigation?
It is part of a water-shed; the lower part of the water-shed only.

2136. What other navigation is included in the water-shed?
The River Ouse for 40 or 50 miles; that is almost a dead level up to York; the tide rises six feet at York, although it is 70 miles inland.

2137. What I want to get from you is this: some of the witnesses have suggested that the Commission should be a Commission having jurisdiction over one water-shed; would it be possible in the water-shed of which you are now speaking, and of which you form a part, to have such a Commission?
Our water-shed is such an artificial one; it might all be thrown into the River Ouse, or it might all be thrown into the River Humber; it is such a dead level that you could scarcely call it a water-shed. The Corporation of York are the Conservators of the River Ouse for a distance of 50 miles, and there is the "Ouse and Derwent drainage" in the same water-shed, and the Pocklington Canal.

2138. Lord *Penryhn.*] The tributaries of that river in that part of the country you

you are alluding to are tributaries themselves, large rivers which come down from various other sources; the Ouse and the Wharfe, for instance?

The Ouse and the Wharfe do not come into our drainage.

2139. *Chairman.*] What water-shed would they belong to?

The Ouse itself would be the natural river for a very large water-shed, right up as far as Scarborough almost; in fact the waters within a few miles of Scarborough do come down by the Derwent into the Humber, a distance of 120 miles, perhaps.

2140. Lord *Penryhn.*] If you took the other direction the area would be immense?

The Humber is the estuary for half the kingdom; it takes the Trent up to Burton-on-Trent.

2141. Marquess of *Ripon.*] Would you not practically have to take each of those large rivers by itself?

I think you would have the Trent by itself and the Ouse by itself, but then the Market Weighton drainage is independent of the Ouse.

2142. The fact is, the Humber is an estuary, not a river?

Just so.

2143. *Chairman.*] Have you formed any opinion on the question of water supply?

I have executed myself works for the supply of a village of 800 people in a rural district; and although when I commenced I thought I was mad almost to venture on such an experiment, yet I found it to be remunerative, and very acceptably received by the inhabitants. Hitherto diluted sewage was the drink of the village, and having diphtheria and typhoid fever there, it was necessary to get a fresh supply of water, and I have laid down about three miles of pipe from a spring.

2144. At what cost?

At a cost of—well, under 1,000 *l.*

2145. Earl of *Sandwich.*] What kind of pipe?

An iron pipe. I merely mention that as an inducement to others.

2146. *Chairman.*] You started from a spring, and carried water by iron pipes to this village?

Yes, a distance of three miles.

2147. And did you supply every cottage in the village?

I have supplied every applicant; beginning with a cottage at 5 *s.* a year, and rising upwards.

2148. And what do you get repaid to you by them for the water?

I have got a rental from 120 tenants of about 70 *l.* a year, which will pay 5 *l.* per cent., and provide a depreciation fund for renewal.

2149. Under what power do you raise that?

Simply as landlord and tenant; I got permission from the highway surveyor to lay the pipe; it was so universally acceptable that there was no difficulty about it.

2150. Earl of *Sandwich.*] Is it worked by a ram?

No, it is a spring that comes by gravitation.

2151. *Chairman.*] Are you the proprietor of all the houses?

By no means.

2152. How do you charge them; what rate?

A cottage pays me 5 *s.* a year, and a farmhouse 1 *l.* a year, perhaps.

2153. Take the cottage first; the cottager pays 5 *s.* a year; for how much water is that?

As much as he likes, as much as he can pass through his tap.

2154. Supposing he did not take it from you where would he get it?

From the beck which runs through the village, and which receives the sewage from the farmyards and the houses.

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2155. Lord *Meldrum.*] Your taps must be off the main pipe?
Yes, a constant supply.

2156. *Chairman.*] Is there no local authority where the village takes this water which you speak of as coming from the farmyards?
There is; and for three years we have contemplated a public sewer, but have not one. You know how difficult it is to move the agricultural mind.

2157. Have you ever considered whether it is possible to store water coming down from the uplands in reservoirs to supply the villages?
Certainly; this is a storage of water at the spring; the spring itself would not supply it; but I have a reservoir as large as this room, perhaps, arched over.

2158. It is not a supply of flood-water coming down?
No; generally flood-water is too dirty; but it would settle, perhaps, if you did store it.

2159. Lord *Somerton.*] This reservoir is near the village?
A mile and a quarter from the village.

2160. Lord *Penrhyn.*] This is a private thing, I understand you?
Yes. I am endeavouring to show how easy it is for private individuals to do such things.

2161. Do you pay anything for the water?
No, it springs in a field of my own.

2162. *Chairman.*] Is the man who pays 5 *s.* a year an ordinary agricultural labourer?
Yes, earning 18 *s.* a week.

2163. And your idea is, that if it is possible to carry that out in other places, the agricultural labourers would willingly pay 5 *s.* a year?
Yes, they are the most willing customers.

2164. Earl of *Sandwich.*] Is it good drinking water?
Yes.

2165. Lord *Penrhyn.*] Have you had any cases of the men not paying the 5 *s.*?
No.

2166. How do you collect it?
A man goes round twice a year. I wish to show that what has been done by a private individual may be done in thousands of cases throughout England.

2167. But in this case the spring is on land of your own?
Yes.

2168. That might be a difficulty in other cases?
But there is no appreciable difference now in the flow of the water.

2169. *Chairman.*] With regard to the appliances for carrying this water, is there any difficulty about the pipes?
No; they are 2-inch iron pipes, joined with lead every six feet, and there has been no difficulty whatever, and iron is extremely cheap now, and therefore now is the opportunity to do it. When I commenced to do it, I gave 9 *l.* a ton for my pipe, and during the latter portion I have given only 6 *l.*

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Monday next, at Twelve o'clock.

Die Lunæ, 11° *Junii*, 1877.

LORDS PRESENT:

LORD PRESIDENT.	Viscount EVERSLEY.
Duke of BEDFORD.	Lord MONSON.
Duke of NORTHUMBERLAND.	Lord VERNON.
Marquess of RIPON.	Lord STEWART OF GARLIES.
Earl of SANDWICH.	Lord PENRHYN.
Earl COWPER.	Lord SOMERTON.
Earl STANHOPE.	Lord WINMARLEIGH.

THE LORD PRESIDENT, IN THE CHAIR.

Mr. JOHN HOOKE TAUNTON is called in; and Examined, as follows:

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2170. *Chairman.*] YOU are a Member of the Institution of Civil Engineers?
I am.

2171. And you were formerly a pupil of the late Mr. Rendel, and an assistant with Mr. Brunel?
I was.

2172. Where do you reside?
At Brimscombe Port, Gloucestershire; I am the engineer of the Thames and Severn Canal Navigation; that is my official residence.

2173. Have you had much experience in connection with floods, and the engineering of rivers, for the purpose of keeping them down?
I have had a great deal of experience.

2174. Where has that been chiefly?
Whilst I was with Mr. Rendel, as his pupil, my experience was exclusively a hydraulic experience. Since that time I have been actively engaged at Llanelly, at Reading, at Malmesbury, at Stroud, and other places, in the construction of works, and as engineer to the Thames and Severn Canal, which appointment I have held for 25 years; I have had a good deal to do with such matters.

2175. You are acquainted with the upper part of the Thames, and also the tributaries in Gloucestershire?
I am.

2176. Have you any papers here which would give us any information upon the state of those rivers?
I have gauged, I believe, every tributary of the Thames in Gloucestershire repeatedly during the last 25 years; but it might save your Lordships' time if I state the result which is expressed by the Thames at Lechlade, and apportion it as nearly as possible amongst each of those tributaries. I gauged the Thames by overfall, which is the most correct way of gauging it, in October and November 1867, at a dry season of the year, with a view of ascertaining the summer flow of that stream. The gaugings which I have here for October give an average of 29,000,000 of gallons as the flow of the stream, but the rainfall was somewhat more, being 2·28 inches in October than I found it in November.

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2177. Lord *Vernon.*] During what time was that 29,000,000 of gallons?
In 24 hours. I took the flow of the water twice daily during the month of October 1867, between the 18th and the 30th of that month. In November the rainfall was but ·65 inches, and the mean of a vast number of gaugings, which I give in detail in this Paper (*pointing to a Paper*), is 19,165,041 gallons.

2178. *Chairman.*] Then what inference do you draw from that?
The conclusion that I draw is, that the summer flow of the Thames at Lechlade is 20,000,000 of gallons in round numbers, which is due to a drainage area of 285 square miles. I have apportioned those 20,000,000 amongst the tributaries that create them; and they are, the River Churn (in respect of which I have some evidence to give to your Lordships), 64 square miles, which would, if apportioned, produce 4,491,228 gallons (I will put the Paper in, and therefore probably your Lordships would prefer my giving it shortly); Thames Head and Swill Brook, 75 square miles, which gives a proportion of five and a quarter millions of gallons per 24 hours; the Ampney and Marston Brook, 25 square miles, which gives one and three quarters millions of gallons; the River Coln, which is the principal tributary, having a drainage area of 86 square miles, giving 6,000,000 of gallons per 24 hours; the River Ray, 35 square miles, giving nearly two and a half millions.

2179. Then has this quantity of water, which you have described as coming out of these various drainage areas into the Thames, any effect upon the river in regard to flooding it?
No, this is the summer flow. I propose to give you evidence as to the relation between the summer flow and the winter flow, which comes somewhat further on in the evidence. We are dealing now with a district that has very little flood-discharge; floods are not known in the valley of the Churn; floods are not known in the valley of the Coln; it is a loose oolitic district, and all the water which falls in that drainage district goes to the development of those large springs, such as Bibury Springs, that are found there.

2180. At what period of the year is the river lowest?
In October, at the fall of the leaf. The particular point of my evidence is, that in such a district storage reservoirs would be inapplicable, because nature has provided abundant storage beneath the surface, and that these waters pass into large subterranean reservoirs beneath the surface, from which they are easily obtainable by tapping. At Cirencester I have driven a bore 142 feet down; I have tapped that reservoir at 91½ feet; the water rose up, and passed over the surface, flowed over the surface. Now, the best reservoir that we can have is there already formed. It is a reservoir, the effect of which is to abate the floods; and it is a reservoir available at seasons of the most severe drought.

2181. Have you examined at other places which you have tapped?
The river which passes through Cirencester is the Churn; that river rises out of seven wells in the Cotswold district; at its source it discharges 31 cubic feet per minute; it goes on accumulating, as it passes over clays, until it obtains, at 5¼ miles below, 320 cubic feet per minute; at that point it passes over the inferior oolitic for a considerable distance, which is a loose rock, and the water begins to abate. At 6½ miles it has fallen to 290 feet per minute; at 8⅛ miles, to 113 cubic feet per minute; and at Cirencester it is only 30 feet per minute. In point of fact, the river is almost lost before reaching Cirencester. (*The Witness explains it to the Committee on a map.*)

2182. Lord *Penrhyn.*] In addition to that which you have just described, that line of the River Churn, are there other catch water valleys in which the same geological formation exists?
There are.

2183. And to a certain degree with the same effect as that?
Undoubtedly; the whole of the valleys specified in that list which I have handed in to your Lordships, with the exception of the Rivers Ray and the Swill Brook, are of a similar character.

2183*. Is there anything singular in that, with respect to the tributaries of the River Thames, which would not be applicable in a more or less degree in other rivers throughout England?

The

The same condition of things must undoubtedly arise through every permeable soil. It must arise in the chalk to a very great extent. It arises largely in this case, because we are passing through a rock of inferior oolite, which is a broken fissured rocks through which water freely passes.

2184. Lord *Winmarleigh.*] In the Cotswold district are there no floods now with a more than usual downfall of rain?

There is a variation in the brook level, but we have no quantity of land flooded.

2185. You have no districts that is seriously damaged by occasional floods?

No. I might say to your Lordships that I think in about 1856 the Cheltenham Water Company applied for powers to take a portion of the water of the River Coln. They proposed to fill a large compensation reservoir by the floods which were assumed to exist in the River Coln. That Bill was opposed, and the farmers' evidence, which was practical good evidence, which was taken upon the subject was to the effect that there were no floods in the River Coln, and that therefore the reservoir could not be filled. That Bill was thrown out, and, I believe, mainly upon that evidence.

2186. Earl of *Sandwich.*] You do not complain of floods in this district?

No.

2187. *Chairman.*] What I understand you to say is that in this district nature has provided storage reservoirs underground?

It has.

2188. And that all you have to do is to tap those reservoirs, as you have done at Cirencester for Lord Bathurst, by which, going down 91 feet, you have as much water as you want?

Yes; it was an experimental bore; it was limited to the water that could pass through two inches, or two-and-a-half inches, or something of that sort.

2189. You have described the state of matters as you found it from the source of the River Churn, along a distance of 11 miles, up to Cirencester?

Yes.

2190. And that the water is stowed under ground?

And I have described the state of things below Cirencester.

2191. But at present you have given us up to Cirencester, because that is where you have tapped?

Yes, that is where the experiment was made.

2192. But your observations would apply below Cirencester?

They do. Below Cirencester I believe the same subterranean water is developed by a large spring known as the Boxwell Spring, which is a very magnificent spring, delivering something in excess of a million gallons in 24 hours.

2193. Then the observations which you have made upon this river would apply, I think you have said, to other rivers where there was a peculiar geological formation?

They apply with greater force to a larger river, which I was going to refer to.

2194. I was taking you rather now out of your own list of rivers which you are about to speak to, and I wanted to know whether these observations would apply to other large rivers in the country, such as the Ouse, the Humber, and the Derwent, and other Yorkshire rivers?

They would apply to all rivers that were circumstanced as that river is, which pass through loose impervious rocks, with a mean dip somewhat beyond the fall of the river itself, so as to give an intersection of the strata.

2195. But what I wanted to know was, whether you can inform the Committee what other rivers there are in England that are similarly circumstanced to the river which you have now been describing?

I am not prepared to give the Committee evidence excepting in my own district.

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trict. I have not considered that point, but I have carefully considered what I have come here to-day to tell your Lordships. I was now going to give your Lordships another river on the west side of the Cotswold district, the Churn being on the east side of them, where there is a larger illustration than even the Churn affords.

2196. Is that the River Frome?

That is the Frome. I can give you one more instance, and that is the Avon, at Malmesbury, where the same condition of things arises; that has occurred to me since your Lordship has asked me that question.

2197. Will you give us the particulars of that case?

The case of the Frome, with a small drainage area of about 25 square miles, is this: after running seven miles, it is almost dry in summer time. On the 14th of September last year I gauged it at the point to which I have alluded as where it is dry, and there I found it delivering 2,000 gallons per minute. Within three-quarters of a mile down the stream from that point, the Chalford Springs join the Frome, and the flow suddenly became 10,000 gallons a minute; the true source of the River Frome being the Chalford Springs, which springs also flow at the base of the inferior oolite, and being from the Liassic sands, into which the surface waters have all obtained access by reason of the highly permeable condition of that formation.

2198. That is the opposite side of the hills to where you have been speaking?

That is on the west side.

2199. Then I think you are able to speak about the navigation?

I do not know whether your Lordships would like me to give you a few explanations with reference to the Local Conservancy Board that was established in the River Churn; I have that down on my notes.

2200. Will you do so, if you please?

In consequence of the great loss of water in the River Churn, an association was formed there, with a view of puddling the bottom of the river, and seeing if anything could be done to obtain more water. This was in 1864. Perhaps it might be the shortest way if I read the notes of the meeting which was held on the 5th of December 1864. "Present: John Poole Haines, Esq., in the chair; Mr. John Lane; Mr. Bravender, on behalf of Earl St. Germans and Mr. Biddell; Mr. Sturge, on behalf of the trustees of the late J. R. Lucas, Esq.; Mr. Taunton, for the Canal Company; Mr. William Sutton; Mr. Thomas Snell; and Mr. Hayward. It was unanimously resolved, That it appearing from Mr. Taunton's report, as well as from the survey made under Mr. Simpson's direction in the year 1860, that the waters of the river are lost to a very great extent wherever it passes over porous strata, and that the leakage at various points has become very serious, each proprietor be called upon and requested to have the bed and banks of the stream through his property carefully examined, and all leakages found therein effectually stopped. That an association be formed for the conservancy of the river, and a committee be appointed, consisting of Sir Francis H. Goldsmid, bart.; T.W.C. Master, Esq.; J. P. Haines, Esq.; Mr. Anderson, for Earl Bathurst; Mr. Lane; Mr. Bravender, for Earl St. Germans and Mr. Biddell; Mr. Hayward; Mr. Large; and Mr. Taunton for the canal company, three of whom to be a quorum, to take the steps necessary to form such association; and that the committee be requested and empowered to employ a competent person to inspect the course of the stream from time to time, and on his discovering any leakage, to call the attention thereto of the owners or occupiers of the lands wherein it may occur, and to take the necessary steps to stop such leakage, provided that the canal company and the millers co-operate and agree to pay the wages of the person so employed." In consequence of that an agreement was entered into between the parties interested, and the millers, of whom there were a good number on the stream, agreed to contribute 1 *s.* a week towards the payment of a man to look after the stream, with a view to diminish the leakage, so far as it was possible. That worked very well for some years, and then disputes arose between the farmers, who wished to irrigate their meadows, and the millers, who contended that they had no right to take water for the purpose of irrigation, excepting at full water time.

2201. And

2201. And does that association go on?
It fell through in consequence of that. There was a feeling of divergence of interests between the farmers and the millers, which led to the discontinuance of the association. We took counsel's opinion, Mr. Macnamara's opinion, at the time on the point as to what were the riparian rights of the farmers. I did my best to induce both sides to adopt the principle of agreement, and to refer the matter to arbitration, which I thought was one of the objects of the association, but I did not succeed, and this voluntary Conservancy Board fell through in consequence of that.

2202. That Conservancy Board was to keep up the water, and not to prevent floods, because you say you have no floods there?
We have no floods there; that is the point of my evidence to your Lordships, that each stream has a different distinguishing characteristic; that in one drainage area you might have a stream similar to the Churn, where the water is lost, and produces springs of the very greatest value, whilst another tributary of the same river might be through a clay soil, where the water was not lost, and where an essentially different treatment would be desirable.

2203. Are you acquainted with floods in any part of this district?
Yes, I am well acquainted with the floods of the Thames.

2204. Before you tell us about that I should like to know how the floods had a beneficial effect upon the surrounding country, or a prejudicial one?
I should certainly say that the balance would be that they were very prejudicial.

2205. To what sort of land would the floods be prejudicial, arable or pasture, or both?
I think that when they became so excessive as we find them in the River Thames as to carry away hay-ricks, and to do serious damage to property, they would be generally prejudicial to any land.

2206. Of course one would readily admit that any flood which carried away a hay-rick was committing an injury; but what I mean is, what has been the effect upon the land after the flood has passed away?
I am afraid that my evidence on that point is not of much value, but I hear what the farmers say in my district, and I have associated a great deal with them during the last 25 years, since I have had the management of the canal, and I think they are rather in favour of an occasional flood for the benefit of the land; I have heard that opinion expressed by the large farmers.

2207. With pasture land the floods would leave a sort of top dressing upon it, I suppose?
It is mainly pasture in the Upper Thames.

2208. The effect of the floods being to leave a sort of top dressing on that land?
Undoubtedly. I have seen that.

2209. Earl of *Sandwich.*] But that is supposing the floods to remain a short time?
Quite so.

2210. Not to remain six or seven weeks consecutively?
Certainly not. The ultimate effect would be advantageous, I have no doubt, but the proximate effect would be very injurious indeed if it continued so long a time.

2211. *Chairman.*] You say that you are acquainted with the effect of the floods in the neighbourhood of the upper part of the Thames?
I am very well acquainted with that. Whenever the river between Lechlade and the termination of the canal, which is three-quarters of a mile above Lechlade, is flooded, then the navigation is stopped, and it is my duty to send a steam-tug, or something of that kind, to enable the vessels to traverse that part of the river.

2212. What has been the cause which has interfered with the navigation there?
The neglect to maintain it.

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2213. To maintain it in what way; keeping a passage clear?

Formerly the navigation between Oxford and Lechlade was maintained by four locks, and a number of wiers, which stanked the water back, enabled the boats to pass over shallow places; when they attained a wier a passage was suddenly opened, and a boat passed through it with a flash. That was the original plan of navigating the River Thames under which, if your Lordships are prepared to take the evidence, I am prepared to give you the quantity of trade that was formerly done.

2214. I think we do not care to go into that; the fact is that the Thames is now the subject of inquiry before the House of Commons; but, as you were here and are well acquainted with the upper part of the Thames, I thought we would take it generally without going into the details?

The difficulty that we have is this: the Gloucester people are exceedingly interested in this question, and have had an influential county meeting at Gloucester lately, in February last, and we had ventured to hope that, as your Lordships deal with the subject of navigation, we might look to you to make some recommendation upon the neglected condition of the River Thames. This (*pointing to a section*) is a section of the canal which connects the River Severn with the River Thames.

2215. What effect upon floods have those arrangements which are made for the keeping up of the navigation?

There have been no complete arrangements for the maintenance of the navigation between Lechlade and Oxford. The former overflows which were provided for the passage of flood waters have been allowed to grow up, and to silt up for want of due attention, and no regulated means for the discharge of flood waters has been constantly maintained. I take, as an instance, the flood passage adjoining St. John's Bridge at Lechlade, which has been allowed to grow up, as I saw a few days since, in consequence of the neglect of the Conservancy Board.

2216. Is it your opinion that the most complete navigation conservancy would be the best security for the diminution of floods in rivers?

It is.

2217. Do you believe that the flood wave would pass more quickly, and with more uniformity over pounded water with suitable overflows, than along the same course of shallower water, although with a fall?

I have no doubt of it; if the flood were to enter the reach of a river that was pounded, it would immediately pass at a very low rate of inclination with greater facility to wiers and points of discharge alongside its course, than if it had to traverse the same course between banks, although with a fall, struggling against the difficulties from the sides and the bottom which it would have to encounter.

2218. Lord *Penrhyn.*] Is not that confined rather to the elevation of the dam at the lower end of that reach?

It would pass on the surface if it were a pounding dam. In the other case it would struggle against the sides and bottom, and would encounter an amount of friction that would tend to stop the passage of that flood below.

2219. Would not that depend upon whether the upper part of the reach, which you suppose, was, or was not, above the elevation of the dam that was at the lower end of the reach?

No; I am assuming a reach that is practically level, or with a very small fall.

2220. Duke of *Bedford.*] Water passes more quickly over water than over earth, in fact?

Yes.

2221. Lord *Penrhyn.*] The pound would not operate at the upper end of that reach?

Quite so.

2222. Earl of *Sandwich.*] You have stated that if the navigation were in good order the river would be in good order generally?

I have not the slightest doubt of that.

2223. Why do not the navigation keep it in order?
The Thames Conservators have contended that they have no funds.

2224. In point of fact the navigation is not a paying concern?
I had wished to give to your Lordships some evidence upon that point which I think may be considered admissible. I will give it in a few words.

2225. But surely if the navigation was worth having, the parties who are concerned in that navigation would keep it in order; they have powers of taxation, powers of levying tolls?
But it would be worth having, I contend, if they would make a through navigation; they have never made a through navigation; they have never got trade from Gloucester; they have left this as a missing link; whereas, I urge their first duty was to complete the route in some sort of fashion, so that through traffic might be carried over it. Had they done that the anticipations of the Act of 1866 would have been realised.

2226. You cannot force any company to tax themselves to make their navigation perfect; how are they to raise the money?
They have 10,000 *l.* a year for the maintenance of the Upper Thames.

2227. And who pays that 10,000 *l.*?
I have taken it from their published statements, which I have here, since 1866. The tolls in round numbers are 4,000 *l.* a year; the payment by the London water companies, which is applicable to the purpose of maintenance, is 6,000 *l.* a year.

2228. Lord *Penrhyn.*] Those are the payments to the Thames Conservancy Board?
Yes, to the Thames Conservancy Board. I only submit this evidence to your Lordships on the ground that you are a navigation Committee, and that if the navigation had been duly attended to, and some proportion of this 10,000 *l.* a year had been applied to a greater extent than it has been applied by the Thames Conservators, then the floods in the Upper Thames would not have arisen to the extent that they have arisen. I have no doubt that if the navigation had been properly attended to, if these passages had been properly maintained, if the passage of the water had been properly regulated, if those magnificent reaches in the Upper Thames had been properly utilised, then the floods which exist in that district would not have arisen, at any rate, to the same extent that they have arisen. I do not know whether your Lordships would like to have an estimate of the flood.

2229. *Chairman.*] No, I think we had better keep ourselves clear of the Thames?
This is a matter of the deepest interest to the Gloucestershire people, and we have had a public meeting at Gloucester attended by almost everybody of influence in the county, and we were hoping to bring the subject broadly before you on that ground, that if the navigation were duly maintained, the river would be at the same time kept in order.

2230. Lord *Stewart of Garlies.*] I understood you to say just now that the millers agreed to pay 1 *s.* a week to a man to stop certain leakages on the Churn; how were the leakages stopped?
It is done in various ways; it is usually done with puddle; puddling the bottom of the stream.

2231. Does that go right down?
Right down into the loose rock, wherever it is exposed in the bed of the streams.

2232. Is it not covered with gravel?
The rock itself is seen in many places in the valley of the Churn; it is not even covered over with gravel or soil, but you occasionally see a section of the rock itself of inferior oolite; it is a rock district throughout, but the same effect would arise if it were covered with gravel; it would pass through the gravel which overlies it.

2233. What is the area, do you imagine, which covers the place of escape?

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It might extend for six miles in length, and various widths, from 15 to 30 feet.

2234. How could one or two men be able to make any impression in attempting to stop such a leakage as that?

In the way in which it is done on navigations; wherever we find there is a leakage of water, the man's duty is to find the point where that leakage arises, and it is usually done, if under water, by what is called wracking, that is, bringing some loamy gravel and forcing it into the fissure with a pointed pole; that is the plan which I adopt on the summit level of the Thames and Severn Canal; that is one way. If the water can be diverted, it would be then done probably by continuous puddle or by concrete, or by whatever was the cheapest means at hand.

2235. And the desired result is obtained, is it?

If it were done effectually, a valuable result would be obtained, because the water would be kept in the stream, and would be available for the purpose of power instead of being lost.

2236. Earl *Cowper.*] It is not an advantage to anybody but the millers, is it?

For irrigation purposes it is.

2237. Lord *Winmarleigh.*] By what means do you gauge the river?

By an overfall; a weir with a notch cut in it.

2238. The usual way?

The usual way; it is the most correct way. I stop the whole river, and force it through that notch.

2239. Lord *Vernon.*] Have the railways, in any part of the Thames that you are acquainted with, had any effect upon the floods?

Not that I am aware of.

2240. Not in impeding the flow of the flood water?

Not that I am aware of; the railway does not cross the Thames where I have spoken of it.

2241. But you have spoken of the question of the Thames as far as Teddington?

I referred to the amount of the flow at Teddington; but between Oxford and Lechlade there is no crossing by a railway.

2242. In the case of the River Churn, where you said that the water was lost in its flow downwards, the upper proprietors who drain into that tributary are conferring a positive benefit in draining their land into the river?

They are.

2243. In that they stand in a different position from those proprietors who drain into other rivers, where it is stated that the floods arise in great measure from the drainage in the upper parts?

Undoubtedly there is an essential distinction between them, because in the one case they bring water where it is wanted, and in the other case they bring it where it is not wanted.

2244. Earl of *Sandwich.*] Do you consider October to be the month when the water is the lowest in all the rivers?

I do; we usually consider the fall of the leaf to be the shortest water season.

The Witness is directed to withdraw.

Mr. *Mills.*

MR. ROBERT WILLIAM FENWICK MILLS is called in; and Examined, as follows:

2245. *Chairman.*] ARE you acquainted with the River Derwent?

Yes.

2246. Are you a land agent, living in Yorkshire?

Yes.

2247. You manage the estates, I believe, of Sir Charles Legard and Sir Edmund Lechmere, the Dean and Chapter of York, and Sir James Walker?
Yes.

2248. You know the district of the Derwent very well?
Yes; from its source to its outlet into the Ouse.

2249. Where does the River Derwent rise?
It has two principal sources; one is near to Filey, and the other is near to a place called Flask Inn, half way between Scarborough and Whitby.

2250. Is the River Derwent subject to floods?
Yes.

2251. And this year has it been much flooded?
More than for the last 30 years.

2252. At what period is the chief flood?
I think more towards the early part of the year.

2253. They have not been so high for many years as they were last winter?
Not for 30 years.

2254. Has there been any Act of Parliament passed in the year 1800 dealing with the upper part of this river?
Yes, commencing at a place called Muston; it was called the Muston and Yedingham Drainage Act. I have a small map (*producing it, and explaining it to the Committee*).

2255. Was the object of that Act to drain and embank the low lands of Muston?
Commencing at Muston, and terminating at a place called Foulbridge, in the parish of Yedingham.

2256. What did the works consist of that were made under the authority of this Act of 1800?
In some cases it was a new cut altogether; and in other cases it was improving the old watercourse, and also embanking it on both sides.

2257. Was a board of directors set up under the authority of that Act?
Yes; and is now in existence.

2258. And with them lies the duty of maintaining the drainage?
Yes.

2259. And is there any navigation?
No, none.

2260. Have they power under this Act to levy a rate?
Yes; there is one levied every year.

2261. The rate is levied upon what area?
I could not state the area exactly, but it is very extensive. For instance, on Sir Charles Legard's property I pay from 150 *l.* to 250 *l.* a year.

2262. How far through Sir Charles Legard's property does this run?
I should think he has about 1,500 acres of low land.

2263. What is the distance from Muston to that point, Foulbridge?
About 10 miles.

2264. The Conservancy Board has jurisdiction over 10 miles of the river?
Yes.

2265. What I wanted to know was, how much of the surrounding country is within the jurisdiction of that Board, so far as taxing goes?
I could not give you the acreage, but I could tell you the limits; the limits are bounded by the Wolds on the south side, and by the Pickering and Scarborough Moors on the north.

2266. You have that 10 miles in length?
Yes, from point to point. If you took the curves of the river it would be rather more.

 2267. However,

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2267. However, it is about 10 miles, as I understood you to say, that this board of directors have jurisdiction over in length?
Yes.

2268. And you have given us two points to which their jurisdiction extends; how far would those be from the banks of the river?
I should think it is not more than a mile and a half from the Wolds, and two and a half miles from the rising ground, rising up towards the Moors.

2269. And how is that rate levied; is it a general acreage?
No, it will be levied according to the improvement that has been made in the lands in the first instance. There would be so many acres taxed at 3 *s.* per acre, so many at 2 *s.*, and so many at 1 *s.* 6 *d.*, perhaps down to 6 *d.*; but they cannot in any year go to a higher sum than 3 *s.* per acre.

2270. It is a maximum sum of 3 *s.* per acre?
Yes.

2271. And who are the judges of whether, or not, the land is benefited?
That is done by Commissioners in the first instance; when the drainage is first established, there are valuers appointed who go over each field within the area, and according to the level above a certain datum point, they tax the land. If there is a natural fall of five feet they probably put nothing upon it; if they come to four feet, they may put 6 *d.*; if they come to two feet, they may put considerably more.

2272. Is there any appeal?
Yes, but there can be no appeal now. This is done in the first instance, and then after there is no appeal.

2273. You say it "is" done; when was it done?
At the time of the Act, when the works were first commenced. Here is one of their annual reports (*producing it*).

2274. You say that in 1800 Commissioners were appointed under the Act?
Yes.

2275. And what was done then?
Then the Commissioners would make a valuation of the improvements likely to arise, and tax each owner in proportion to that improvement, and that paid the expenses of carrying out the original work; and it is supported in the same way up to the present time.

2276. What I want to know is this; take Sir Charles Legard's property, for instance, which you told us you had lately paid a rate on; when was that rate fixed?
The rate would be fixed about 1800, when the award was made. If there were 300 *l.* required to do a certain amount of repairs that extended over so many acres, and there would be a certain charge per acre; if there was 200 *l.* required there would be one-third less charged per acre.

2277. Lord *Penrhyn.*] It is levied, in fact, in proportion to the requirements of the time, but in the same proportion with regard to the different portions of land as was originally fixed?
Yes.

2278. And those are for works of renovation going on from time to time?
Yes.

2279. With a limit of 3 *s.* an acre?
Yes.

2280. *Chairman.*] The proportion was set out at the passing of the Act, as I understand you?
Yes.

2281. And now each owner contributes his *quota* of what is wanted, according to what is required?
Yes; some years the expense is much greater than others.

2282. Does

2282. Does their jurisdiction include the whole of the water-shed of that 10 miles?
Yes.

2283. Lord *Penrhyn*.] That rate was fixed in accordance with the estimated benefit to be derived by the land per acre?
Yes.

2284. And not upon the actual value of the land?
No.

2285. *Chairman*.] And have the works that have been carried out by this Board had any sensible effect in keeping down floods?
Yes, there is no flooding in that division.

2286. Then is there flooding in the other part of the river?
Yes, very considerable.

2287. Where would that be; from Foulbridge to where?
From Foulbridge to the mouth of the river where it joins the Ouse.

2288. At Barmby?
Yes, at Barmby.

2289. How far is that?
About 40 miles in a straight line.

2290. Then this 10 miles is where you say there is not much flooding?
That is so.

2291. But on those 40 miles between Foulbridge and the junction with the Ouse there is a very great extent of flooding that goes on?
Yes.

2292. And has the extent of those floods been prejudicial to the lands in the neighbourhood of the rivers so flooded?
Very much so.

2293. What is the character of that land?
A good deal of arable, until you come to the lower parts, and then it is chiefly grass; it would be useless having it under the plough, it being so liable to floods

2294. Would your remarks apply to arable land only?
I think arable land is much more damaged by floods than the grass land.

2295. But do you think the grass land is damaged by them?
Yes, I do.

2296. How long do the floods remain on that portion?
This year they have been on nearly six months. I have some 40 acres of osier beds, and this year we have not been able to cut a large part of them in consequence of the water; we cannot get at them.

2297. And what, in your opinion, is the cause of the flood between Foulbridge and Barmby?
I think that the first block is at Malton, where the channel of the river is very narrow, and the ground rises up rapidly on each side, and it is so contracted that the flood-waters cannot escape; they come down very rapidly from the moors, and accumulate between Foulbridge and Malton, on the low grounds.

2298. Then do they come down with greater force and rapidity in consequence of the works which this Board have carried out?
No; I think that the greater bulk of water comes more from the lower end, up towards Pickering; there are some tributary streams which come in there, which come down very rapidly from a very extensive district of moorland.

2299. Not from the improved agricultural drainage?
No.

2300. Marquis of *Ripon*.] All those moorland rivers run off very quickly?
They do; they come down very rapidly.

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2301. *Chairman.*] There are no Conservancy Boards of any kind between Foulbridge and Barmby?
None.

2302. And I think you said that there was no navigation on this river?
There is a navigation on the lower part; there is navigation from the Ouse to Malton; there is no navigation on the upper part.

2303. Lord *Somerton.*] No navigation on any part of the Derwent?
No navigation on any part of the Derwent above Malton.

2304. *Chairman.*] And you say that the floods are caused by the river being confined between banks, partly natural banks, and by artificial means as well?
Yes, that is going down to the lower end nearer to the outlet where some landowners have embanked their own property, as for instance, Sir James Walker has embanked his, and other people have also embanked and placed their banks very near to the channel of the river.

2305. Lord *Vernon.*] Have all those banks, in your opinion, which have been made by private proprietors been judiciously made?
I think they are very good banks so far as the owners of the land they adjoin to are concerned, but they are prejudicial to the owners of the upper land, by confining the water. The landowners kept the water out of their own grounds, but shut it up on the properties above.

2306. It prevents the proper flow of the water?
Yes.

2307. Lord *Somerton.*] Are these banks immediately on the bank of the river, or a little removed?
Some of them may be 10 yards, and some not more than five.

2308. Lord *Monson.*] They have been erected of late years?
Yes.

2309. Since the year 1800?
Yes, some have been erected within my own knowledge not more than 35 years ago.

2310. *Chairman.*] Then your experience is that that part of the river which is under the direction of that Board is satisfactory?
I think it is.

2311. And that the floods occur when the river is no longer under the jurisdiction of that Board?
Yes.

2312. Then I conclude from that, you would be in favour of a general board to deal with the river?
I should, to deal with the whole of the river.

2313. Is it your opinion that there should be a Conservancy Board to manage the whole river from its junction with the Ouse to its source?
Yes, it is. There was a scheme last year proposed for improving the upper part of the river which I was asked to join in, but I objected because I could not do it without injuring some of my clients, who are owners of property near the outlet, as the water would be sent down with much greater rapidity than it had been before, and we should be more flooded than we have ever been.

2314. Have you considered what should be the powers of a Board constituted in such a way as you propose to manage the whole river; I mean the powers of taxation; how far would you carry them?
I think that the powers of taxation should not exceed 3 *s.* an acre per annum on the lowest ground.

2315. And would you tax them according to the benefit which they are supposed to receive?
Most decidedly.

2316. And

2316. And the upper lands, which cause the floods and do not receive benefit from it, you would not tax at all, I suppose?
No; all lands which you could underdrain, say to the extent of five feet with their present outfall, I should not tax, but if they had not an outfall of four feet, then I should tax them.

2317. Would you resort to the plan that was adopted in 1800, that of having Commissioners appointed in the first instance?
Yes, most certainly; and then having the several riparian landowners as directors for future management.

2318. Lord *Penrhyn*.] I do not quite understand what you mean by the lands that have an outfall of four feet?
Supposing you want to drain a field, and you find that you could not get an outlet, if you underdrain to the depth of four feet, I should consider that you had an insufficient drainage, and if I could give you a drainage of five feet, then I think your drainage would be better, and you ought to pay for that.

2319. Do you mean an outfall into the river itself?
Into the river, or drain, or whatever happens to be the end of your outfall drain.

2320. You mean that any field which, for the purpose of drainage requires an outfall drain of that depth of five feet, should come under your area of taxation?
If it had five feet it should not, but if it had only four feet. If you had five feet here, from the top to the bottom (*describing it to the Committee*), I should put no tax upon that.

2321. Earl *Cowper*.] I think you said that it was below you chiefly that the banks of the river were flooded?
Yes; but I am concerned with property belonging to the Dean and Chapter of York, in the flooded district.

2322. Do you think that these floods are at all in consequence of any works that have been done by you in your part?
No, I think not.

2323. The improvement of the channels, for instance?
No, I think not; of course they will help to a small extent.

2324. How large a district would you have the water-shed of the Derwent?
The water-shed. It would embrace from near the sea at Filey to the Ouse; the River Derwent rises within a very short distance of the cliff at Filey.

2325. You would make the whole of the Derwent into one district, as I understand?
The first 10 miles I would except; they appear to have managed their affairs very well.

2326. You would leave them an independent authority?
Yes.

2327. Would not the two authorities be likely to clash?
I do not think so. I think that what was done by the lower part would tend to improve the upper part, give them a better outlet; but I should have no objection to include the whole if they wished it.

2328. *Chairman*.] I understand you to state that, finding this Board now in existence, who have done their work very well, in any proposal that you made for dealing with the other part of the river, you would not interfere with them, but you think you might act independently of them, and possibly in concert with them?
Yes, that is my opinion.

2329. And that nothing that the Board which you are suggesting could do would injure them?
Certainly not.

2330. Earl of *Sandwich*.] Would it not be as well for that Board to take the whole river?

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I should see no objection if the upper part would consent to it. I think it would be better if the owners of the lower part of the river were directors, and not to take the existing Board to control the whole river.

2331. *Chairman.*] Whereabouts is the Market Weighton Canal; is it in this neighbourhood?
It is between York and Hull.

2332. Have you any knowledge of that part of the country?
I manage an estate there belonging to Mr. Langdale with 1,000 acres, more or less flooded.

2333. Do you contribute to the funds of the canal?
Yes, and derive very little benefit from it.

2334. I think we were told the other day by a witness that the Market Weighton Canal was constructed partly for drainage purposes?
It was.

2335. And you consider that they have not carried out those purposes?
I consider that the works are quite inefficient.

2336. You pay your money and are still flooded?
Yes, certainly.

2337. Marquis of *Ripon.*] You would propose to deal with the Derwent as a whole, you say?
Yes, from Foulbridge to Barmby.

2338. You would not include it in any arrangement that might be made for the Ouse, though it is a tributary of that river?
No, certainly not.

2339. You think it should be kept quite separate?
I do.

2340. *Chairman.*] I suppose you think it would be work enough for a board of direction to manage the Derwent and the catchment basin which applies to it?
Yes, and it would be a very serious matter to include the Ouse.

2341. Marquis of *Ripon.*] It has, in fact, very little to do with the Ouse; it is not very far from the junction of the Ouse and the Trent?
No.

2342. Lord *Penrhyn.*] At the point where the junction with the Ouse is, there is no great area of lowlands, is there?
No, very little.

2343. Now, in your proposition of fixing the particular portions of ground which should become liable to taxation for any improvement work, you have said that anything that required four feet drainage would come under the proposed tax, and that anything that had it to the depth of five feet would not; what is your basis; where would you take the starting-point to reckon it?
If it went to a field, I should go to the lowest point of that field, and I should level for it from the bottom of the ditch to the lowest part of the field I was about to drain.

2344. Would that be a fair criterion, supposing that field was a considerable distance from the river?
The outlet flowing into the river.

2345. Duke of *Northumberland.*] Do you mean that the outfall of the drain must be five feet above the level of the river?
Five feet above the summer level of the river.

2346. *Chairman.*] You take the summer level of the river as the datum point?
Yes.

2347. Duke of *Northumberland.*] When you get to Barmby on the north bank of the river, is there not a good deal of warp land?

There

There is a considerable quantity of warp land a little lower down, but the great extent of warp land is below Hull, on what they call Sunk Island, belonging to the Crown.

2348. Now with regard to keeping up those banks and protections against the river, they are all now paid for by the proprietor of the land?
Yes.

2349. How would it be in the case of conservancy; would you take that charge from the proprietor of the land, or leave it upon him?
Supposing that there is a drainage established for the River Derwent, I think that with regard to the outlet where there is very little land to be benefited, the charge should fall upon almost the whole extent of the river drained, something in the similar way as where a highway board is in operation. For instance, if a turnpike trust is done away with, that highway is thrown on to the general fund; and where you have an outlet which is affording little or no advantage to the lands it is immediately passing, it is only fair that the lands using that outlet higher up the stream should contribute to the cost of keeping it in order.

2350 At the present moment the course of that stream varies continually, owing to the nature of that soft alluvial soil?
Yes.

2351. At the present the proprietors have the charge of keeping up the banks of that portion of the river on the part of their property?
Yes.

2352. How would that be in the case of a conservancy?
I do not think that it would fairly fall upon them to do more than to maintain the banks in their existing state, but I think it would be required to widen those banks very considerably.

2353. But the course of the river varying, it follows that the proprietor, if he secures his own bank, is very likely to injure the bank on the opposite side?
Yes.

2354. Would you prevent his doing so by taking the whole of that charge upon the conservancy?
I think I should; I do not think I should be able to secure a good outfall without.

2355. Then your idea is that the course of the stream should be maintained in the best possible state through the means of the conservancy?
Yes.

2356. And should be taken out of the hands of private individuals?
Yes.

2357. *Chairman.*] You have experience in various parts of the country, and you can tell us whether you think that agricultural drainage has been the means of causing floods. In this part you say that it has not, because the water comes from the moors?
I think it has to a certain extent. The waters in our rivers come down much more rapidly than they used to do, and the floods, as a rule, last a very much shorter time.

2358. They come down faster, and go away faster?
Yes, the water used to come more gradually when there was less under draining.

2359. Have you formed any opinion as to whether railway embankments have anything to do with the floods?
If you mean as being impediments to the free course of the water, no, I think I have not.

2360. Earl *Cowper.*] With regard to drainage causing floods, you say that it is not so much that they cause greater floods, but that the floods come down faster and go away faster?
Yes.

Mr. *Mills.*

11th June 1877.

2361. And this is, on the whole, a better state of things, is it not; it is better for the farmer that they should come quick and go quick, than that they should stay on a long time?

Yes.

2362. Therefore the drainage does not really make the state of things worse on the banks of the river?

No; I do not know that that will particularly apply to this district, because we have comparatively so very little land that is drained; we have the Moors on one side, and the Wolds, which are chalk and do not require draining, on the other.

2363. You would not have much experience of the effect of drainage of that particular part?

No, but I have a good deal of clay land.

2364. Do you think that any general Act should be framed that would apply more or less to all the rivers in the country with regard to the formation of Conservancy Boards?

Yes, that is my impression. I think if there were any means which would put it in the power of landowners to get an Act at a cheap rate, it would certainly lead to improvement in the arterial drainage of the country.

2365. But the details must vary according to the circumstances of each district?

Yes, they must vary according to the circumstances of each case.

2366. Lord *Penrhyn.*] Have you ever heard, or is there any record of great disputes at the time when this Act to which you refer was passed in settling the proportionate Acts upon each portion of land?

No, I have never heard of any; and I know a recent drainage which has taken place where the disputes have all been easily settled.

2367. You never heard of any great disputes about it?

No. There was one drainage not very long ago called the Ouse and Derwent Drainage; that was got up by Lord Wenlock, and the rate was levied according to the improvement of the land which it embraced, and there were some appeals in that case, but very few, and they were very easily settled. Another Act I recollect was obtained for the Rye and Derwent Drainage; that is above Malton; there was no dispute there of any importance. I do not apprehend any difficulty myself.

2368. Earl *Stanhope.*] Then your general remedy is this; a central board with power to make embankments for the whole river?

Yes; not only to make embankments, but to take away obstructions, weirs, and all sorts of things.

2369. Are there many locks on the river?

And locks, too; but in some cases where it might be very expensive to acquire the navigation, it might be possible to have sluices formed in the weirs so as to relieve the flood.

2370. You would propose to remove the existing weirs, would you?

It would depend upon what it might cost. You might make the works so costly that it would not pay to execute them; if you were to pay a very large sum for obtaining the navigation, you might make the tax upon the lands improved so large a matter that it would not be beneficial to carry out the works; the expense would be too great.

2371. Have you any flood-gates now in the weirs of the river?

No.

2372. No means of letting off surplus water?

No.

2373. And you think that the lock-gates keep up a body of water, and so in time of heavy rain cause floods?

Yes, in fact I have seen the water on both sides of the weir perfectly level in consequence of the water being held up. I have seen the water below the weirs on a level with that above them.

2374. With regard to the question put to you by Lord Cowper, you admitted, did you not, that the part of the river which you conserve makes the water flood the lower part of the river?
No, I did not go to that extent.

2375. To a slight extent you said that it did?
It might to a slight extent, because if it is well drained it would come down quicker than it would otherwise, and therefore it tends to swell the flood below. If it was held up of course it would take longer to get down.

2376. *Chairman.*] Have there been any complaints of parties on the river, or below that portion of the river which is under the Board, that they are injured by the operations of the Board?
I have never heard any.

2377. I understand you to say that you would prefer that the river should be placed under a Conservancy Board, and that that Board should deal with the river according as circumstances arose?
That is so.

2378. And that you do not pledge yourself to any particular mode of action, but merely to deal with the various parts of the river as the necessities would dictate?
Yes; I think it would not do to make a fast rule, so as to tie one's hands.

2379. Marquess of *Ripon.*] You feel that the circumstances of each separate river differ so much, that you could not lay down an iron rule?
Certainly.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Monday next, at Twelve o'clock.

Die Lunæ, 18° *Junii*, 1877.

LORDS PRESENT:

Lord President.	Lord Vernon.
Duke of Bedford.	Lord Stewart of Garlies.
Duke of Northumberland.	Lord Ker.
Marquess of Ripon.	Lord Penrhyn.
Earl of Sandwich.	Lord Somerton.
Viscount Eversley.	Lord Winmarleigh.
Lord Monson.	

The LORD PRESIDENT, in the Chair.

Mr. JOHN BAILEY DENTON is called in; and Examined, as follows:

Mr. *Bailey Denton.*

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2380. *Chairman.*] I need hardly ask you whether you have had very considerable experience in dealing with the subject-matter into which this Committee is assembled to inquire?

I have.

2381. Were you ever connected with any Conservancy Board?

Yes, I was a Commissioner on the Nene, but I have not interested myself much in the details of management.

2382. Has your attention been turned to the effects of the drainage of landed property upon river systems?

It has been very closely. I have, as your Grace may know, been 30 years very much engaged in the drainage of lands, and also in the sewerage of towns, and I am anxious to state as clearly as I can the result of my observations. Under-drainage hastens floods, and increases the quantity of water thrown down into the valleys under certain conditions; first, by the improved outfalls which discharge the water of the under drains as well as surface waters, that is, those waters which, not being absorbed by the soil, flow off the surface. All land improvements based on systematic drainage effect both those objects at the same time. It is more by these outfall works than by drainage itself that the upland waters, which were previously detained for want of outlet and outfalls, are now thrown down more rapidly into the valleys. Up to the time when the rain has filled the soil and brought it into a state of repletion, that is, of saturation, the drained land absorbs and retains the rain falling on its surface, and so retards overflow and delays floods. When clay land, however is filled up to a condition of saturation, which generally does not take place earlier than November, rain falling on the surface will pass through the crust of soil which is drained down to the under drains, and out by them to an amount equal to one-half of the rainfall in 24 hours. If an inch falls on the surface, half an inch, when heavy rains occur, will pass out by the under drains.

2383. In 24 hours?

In 24 hours; this under-drainage water, plus that which flows over the surface when the land is in this saturated condition, amounts to much more than would have escaped off the surface alone before the land was under drained. Floods are hastened and increased by the quantity of water which (by rendering clay lands absorbent.

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absorbent, and free soils open to take in the rain) the under drains discharge from beneath the surface, as this water would, before drainage, have been evaporated from the surface. Out of an annual average rainfall of 32 inches, experiments made by myself and others have satisfied me that in wet winters as much as five inches of rainfall will be absorbed and discharged by clay lands, and twice as much from the under drains of surcharged free soils; so that if the quantity of hill land under-drained of each description be equal in quantity, the average or main discharge would be $7\frac{1}{2}$ inches per acre. This water, which is new water, inasmuch as before drainage it passed off as vapour into the air, now is discharged as water, and reaches in wet winters, in the case of clay lands, as much as 113,000 gallons per acre, or upwards of 500 tons per acre in the year; and in cases of free soils as much as 226,000 gallons, or about 1,000 tons of water per acre. This water, which is quite independent of the water which will still flow off the surface when not absorbed, unfortunately reaches its maximum flow at those times when floods prevail. Now, to put this into figures, I would represent them in this way: The average consumption of water per head in England and Wales does not reach 9,000 gallons a year per person. Or, say that in the gross the population of England is 25,000,000, and multiply that by the 9,000 gallons, and the total water supply of England is 225,000,000,000 gallons. Estimating the extent of land systematically under-drained in England and Wales at the present moment at 3,300,000 acres, it would appear that in wet years as much as 559,894,000,000 gallons, or $2\frac{1}{2}$ times the whole required water supply of the country, is thrown down to reach the sea somehow. Now, to make this more intelligible, or to put it more tangibly, this quantity exceeds the average dry weather outflow of the Thames by nearly 50,000,000,000 gallons; the under-drainage water might, in fact, create a new Thames in England and Wales in wet years.

2384. What is the amount which is set apart for each individual's consumption per diem; is it not 30 gallons?

Thirty gallons is now considered to be the proper quantity to apportion to each individual; but taking the average of rural with urban districts, it is very much less, and it is likely to be even much less still in future. Increased care is being taken in the consumption of water, and with increased care there is less waste, and the quantity actually consumed and required will be less. I think 30 gallons a head is in excess of what will be wanted.

2385. That is what is always allowed in dealing with these questions, is it not? Yes; 25 gallons or 30 gallons a head per diem.

2386. What is the minimum quantity in towns?

The minimum quantity in towns which has been found to answer the purpose is five gallons per head; I believe at Stroud that was the case. Every engineer who wishes to provide the right thing allows 30 gallons per head. The quantity of water thrown off the surface of their catchment basins, and discharged at flood times and freshet times at the outfalls varies from a mean depth of six inches in the midland, southern, and eastern districts, to 20 inches in the northern and western parts of the country, including Wales; making a mean of the whole country of 15 inches depth, while the perennial flow of rivers, taking one with the other, is perhaps only four inches. I give you the 20 inches as the quantity of water thrown off by floods and freshets from the western part of the country; that is, all lying to the west of the out-crop of the lias, which extends from Lyme Regis, in the south of England, to beyond Scarborough in Yorkshire, upon the eastern coast; including the Devonian range of the west of England, the Silurian range of Wales, and the carboniferous range of the north of England. All those lie to the west of the lias, and have considerable height, and all very largely consist of impervious surfaces, and throw off an average of 20 inches per acre. On the east of the lias, when you come to the midland and eastern counties, a very different state of things exist; instead then of having 20 inches, the quantity thrown off averages six inches.

2387. The Duke of *Northumberland.*] Do you speak of the fall?

I speak of the depth of rain which would in the aggregate, if detained, cover the surface of the country; while to maintain the normal condition of the rivers, that is, the dry-weather state of all our rivers, four inches only is discharged by them. The average annual dry-weather outflow of the Thames, however, is 6·86 inches.

2388. Lord

2388. Lord *Penrhyn*.] Do you mean that between the average of 4 inches and the average of 15 inches, the flow of the river is a flood flow and not a normal flow?

Not exactly.

2389. The difference between 6 and 15 would be the difference between flood water as against the normal condition?

No; I may take the Thames as an illustration. There is the dry-weather or normal flow and the wet-weather or flood flow; taking the mean of the two, the annual outflow is 9·25; therefore there is due to floods, taking an average of years, something like 2¼ inches. There is a very general impression prevailing that the under-drainage of lands causes droughts, and I am here to deny that allegation. It is manifest that as no water can run out of the under drains until the ground beneath is filled with water, it can have no very sensible action upon droughts. The rain as it falls in the autumn descends and passes the level of the under drains until the soil beneath those drains is saturated. As soon as that ground is in a saturated condition, the drains begin to simmer off the water as it rises, and the result is that you have always running, when there is water to run from the under drains, the rain that has descended, and you have between the water level and the surface a crust of soil three, four, or five feet thick, which really acts as a prevention to evaporation; so that the effect of under drainage is rather to preserve the water supply resting in the sub-soil, than to cause droughts.

2390. The water in the sub-soil below the drain must of course have come, n the first place, from the heavens?

No doubt.

2391. And then, when it gets filled, it rises up to the level of the drain?

Yes.

2392. And then, as that rainfall increases, so the drain gets fuller and fuller, and carries off the water?

Yes, no water enters the under drain from above; it first descends past the drain, fills up the soil beneath the drain, and then as it rises in the soil, it flows away by the drains laid there for the purpose.

2393. Duke of *Northumberland*.] But you have already cut off a large portion of that water by surface drains, have you not?

We cannot cut it off; the water, as it falls on the surface, is absorbed on the soil; it permeates that soil down to the level of the drains, and when it gets there, if the ground beneath the drains is dry, not a drop of water will run out by the drains; it goes past the drains, fills up the ground underneath, and then directly the ground is filled with the water that has descended up to the level of the drains, the drains begin to act and they continue to act, with increasing outflow while there is a downfall of water from above. Then in spring, when evaporation and vegetation are active, they overcome the disposition of the water to rise in the soil, and the drains cease to run; but between November and May the water that has penetrated the three or feet crust of earth, gets down to the level of the drains, and passes off by them. What I wish to remove, if I can, is the impression that drainage causes droughts. Now, inasmuch as all the water that passes out of these drains consists of water which would, without the drains, have risen up in the soil to the surface to be evaporated, such water is manifestly new water, for it would have passed off as vapour, and have been lost.

2394. Lord *Penrhyn*.] Would that explanation apply to cases where under drains are laid upon the top of the impervious soils below, or only when the drains are not to the full depth of the soil?

It applies to all soils; drains laid in clay lands cause a dryness of the soil beneath, for this reason, as long as they are running they are keeping the water down to the level of the drains. When in summer, from the action of vegetation and evaporation, there is no outflow from the drains, then gradually the dryness of the soil continues below the drains even in the clays. You will have cracks below the drains for a considerable depth, and the water vanishes, and the air takes the place of the water; and the result is, that in the months of September and

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October, the soil below the drains will be in a condition to receive the rain fall before there will be any outflow from the drains; such replenishment must take place before the drains come into action at all.

2395. *Chairman.*] The drain acts as a sort of waste-pipe?
Exactly so.

2396. Lord *Ker.*] Did I understand you to say that the drainage had no effect upon drought?
It has no appreciable effect in my opinion.

2397. Surely drought has something to do with the evaporation from the surface soil. I understand you to say that the drainage takes off the water, which otherwise would have evaporated from the surface of the soil?
Yes.

2398. Has evaporation from the surface of the soil nothing to do with drought; the absence or presence of water must have something surely to do with the drought, must it not?
Very little; as long as evaporation is taking place from the surface there must be wet in the ground itself, and such is the condition of land in an undrained state; but inasmuch as by taking water out of the ground, you take from the atmosphere that which would be converted into vapour, you really create a new water; that must be clear to everyone.

2399. But if that water had not been taken away by drains it would have evaporated into the atmosphere, whether it was new or old water, would it not?
Yes; it is because it is rescued from the atmosphere that it is called a new water.

2400. When there is no such evaporation from the surface, that adds to the drought, does it not?
The effect of evaporation is to help the deposition of rain; but in this country, an island which is surrounded by the sea, and is comparatively a small space, the loss of that evaporation in the production of rain, is comparatively nothing.

2401. That is rather another question. What I wish to arrive at, and what I do not understand, is this: you say that having drains makes no difference whatever in the state of drought in the country?
My opinion is, and that opinion is based on observation, that the effect of drainage in this country has been to originate a very large quantity of water in the shape of perennial and periodical outflows; that water which would have been evaporated if there had been no drains at all. I have drained thousands and thousands of acres of free soil, and have originated outflows of water, which have been found most useful in districts where there was no water before.

2402. Lord *Penrhyn.*] Do we understand you that all the water which runs off from under drains is water which is rising, and is not water which is falling?
It must fall first, and rise upwards to pass out by under drains.

2403. The water which passes off by the drains is water which is rising from below, and not what comes down from above; is that so?
Yes.

2404. Whether it is of a porous nature, or whether it is a clay soil, all the water which runs off from the drains is more immediately rising, and not water that is falling?
With the exception of the word "immediately," I should accept that statement. It first must pass the drain, or go down to the level of the drain, before any water can go away.

2405. As I understand, it goes down below the level of the drain?
Yes, when from the atmospheric influences the soil beneath the drain has been made capable of absorption, which is the case even in clay lands after a dry summer.

2406. That is by means of cracks?
Yes, it cannot crack without losing moisture; the very fact of the existence of the crack shows that the water has passed out of the soil.

2407. Duke of *Northumberland.*] Take the case of peat moss, that retains the water for a considerable time, does not it?
Yes.

2408. If you were to drain that peat moss, do you not suppose the water would pass off more rapidly?
Up to the time when the water has reached the level of the drains, all outflow would be retarded, because the soil which is drained is made capable of absorption, and to a certain extent, retention; and while in that condition floods are prevented; but as soon as the soil beneath the drains is filled with water, and the water is passing from that level out by the drains, then the water coming down on the surface, passes through the crust of the ground, down to the level of the drains, and passes out in clay lands to the extent of half the rainfall in 24 hours, and so increases floods.

2409. But if you strip from the surface of the soil the retentive sponge which absorbs the water, surely the water which falls will go off more rapidly from the ground which has been so denuded?
It will, but that is an unnatural state of things.

2410. Lord *Ker.*] As to the drainage not making any difference in the drought, I understand that in an undrained district, all the water which is held by the surface of the soil would naturally evaporate; and the evaporation would surely make a difference in the amount of dew and moisture on the surface, and probably, in a large area of ground, would make a difference in the amount of rainfall; if you put drains in, any water that would remain above the level of the bottom of the drain would be prevented from evaporating, and would be carried off, in the form of water, into the drains and into the rivers, or wherever it may happen to go; and it seems to me that that being the case, it must make a difference over a large area in the state of the drought?
In my opinion, it makes no appreciable difference; still, as your Lordship technically puts it, there must be a difference, but so small as to be practically of no consideration.

2411. You are speaking of this country?
Being a sea-girt island we have so much moisture from the sea that any little effect from draining the land is a bagatelle, and cannot be considered; whereas there can be no doubt, and I hope I have made myself understood, that that water which by drainage is rescued from the atmosphere, and discharged from the drains, is thrown down into the valleys to the disadvantage of those valleys; and the extent of water which under-drainage rescues from the atmosphere I have already given in absolute figures.

2412. Marquess of *Ripon.*] Then you do consider that the improved agricultural drainage has the effect of increasing floods, do you not?
Yes, after repletion has taken place; as soon as the soil is saturated to the extent that I have explained, water is thrown down from the uplands into the valleys, in a very large degree; the total quantity thrown down from the uplands in England and Wales in wet years is equal, as I have said, to another Thames.

2413. Lord *Somerton.*] Then it would come down, I suppose, with greater rapidity than it did previously?
It would come down according to the rainfall, and according to certain atmospheric conditions; but in such years as the last, the quantity of water thrown down by under-drainage must have been very great indeed, and must have quite equalled what I have given in figures.

2414. But it comes down more rapidly than it would do, supposing the land were not drained is not that so?
No doubt, from the cause that I have mentioned. The first object of a landowner in improving his estate is to improve his outfalls; he cannot drain, particularly when Government requires a deep system of drainage, without improved

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outfalls. With improved outfalls, you not only give outlets for under-drainage water, but you give improved means of discharge for surface water; if you put the two together, you must necessarily largely increase the floods.

2415. So that it raises the level of the flood water much more quickly, I suppose, does not it?
Yes.

2416. *Chairman.*] The water would come much more quickly through a pipe than out of a sponge, would it not?
Yes, it is so; but remember that these very outfalls that you provide for your under-drainage are the means of discharging all water that could not enter the sponge. All the water that has not time to get into the ground flows off, and the very outfalls that you have provided for your under-drains are a means of getting the water down into the valleys.

2417. Marquess of *Ripon.*] That is decidedly the result of your professional experience?
Most certainly.

2418. *Chairman.*] We should like your opinion as to what effect the floods have upon the lands, whether injurious or advantageous?
A flood passing over the surface of meadow land quickly does good, but if it is detained for days, as has been the case during the last winter, I believe great injury results.

2419. Then, as a rule, you would say that the floods are injurious to land, taking the whole country and speaking in general terms?
Yes, speaking generally.

2420. Lord *Ker.*] But even as to meadow lands, it must make a difference as to what kind of land it flows over, must it not?
Yes.

2421. It is the fact, is it not, that from mountainous districts a quantity of gravel and other things comes down which does harm even to meadow land?
I have known great injury done to cattle from the grit that remains on the leaf of the grass; the cattle eat the grass and the grit with it, and it has the effect of purging them.

2422. In meadow lands it is only in the case of alluvial soils that it can do temporary good; in other cases it is innocuous?
Yes, if I understand your question rightly.

2423. Lord *Somerton.*] One would imagine that water impregnated with iron would be mischievous to grass land?
Decidedly so. A flood passing rapidly over the ground has something of the character of irrigation. We put water on land for irrigation, and if it is done properly it does a great deal of good, and floods accidentally may do good as well as harm.

2424. Viscount *Eversley.*] Does not it depend upon the quality of the water. Water coming from a chalk country will irrigate meadow land far more beneficially than water coming from a heath country?
Most water from chalk holds in solution valuable ingredients, which are spread over the land in the most acceptable way for vegetation.

2425. Lord *Vernon.*] If you were an occupier of meadow land, and striking a balance of the advantages and disadvantages, would you rather have a flood on the land, or would you rather have it excluded altogether?
Decidedly excluded. That which a man cannot be the master of is generally an evil.

2426. Lord *Penrhyn.*] Do you conceive that as drainage goes on it will have any appreciable effect upon the dryness of the climate on account of the absence of that evaporation which you spoke of just now where land was not drained?
I think that we are so advantageously placed as an island with the sea around us, that we shall never know the evil that you anticipate.

2427. *Chairman.*] What is the next point that you have in your Paper?
The next point upon which I want to speak is the effect of town sewerage upon

upon rivers as regards the subject that you have before this Committee. The effect of sewering towns is to discharge into rivers the solid trade refuse of manufactures as well as the detritus of roads and mineral substances which accidentally find their way into the sewers; those substances even under the very best systems of sewage disposal, must always be discharged in large quantities. There are no towns in this country that do not discharge road detritus, the *debris* of roads, in very large quantities, and whatever the treatment of the sewage from towns may be, that treatment must have relief in the way of storm overflows, and it is at times when the storm overflows come into action that the road detritus is carried into the rivers. I will not trouble the Committee with any remarks upon the solid refuse discharged by manufactories, because I am sure every Member of this Committee knows about that as well as I do; but I should like to impress upon this Committee the importance of having some jurisdiction in towns over the discharge of road detritus. To illustrate the point that I am now referring to, I should state that in the Metropolis the whole of the road detritus is discharged into the Thames at the entry of the port of London; and though I know that amongst engineers there is a good deal of difference of opinion as to what the effect of that is, it is so manifest to anyone who is not an engineer, as well as to those who are engineers, that the road detritus must be deposited in the bed of the river, and must gradually raise the bed, that I do not think it necessary for me to lay any great stress upon it. It is the fact that the road detritus of this metropolis is now going into the Thames in very large quantities, and, being oscillated between ebb and flow, is deposited; and what is going on in the metropolis goes on in all towns in a less degree, and raises the beds of rivers as they approach the sea, so that you have a bar rising before you at one end while the under-drainage and improvement of land is throwing down water at the other; and between the two you have mills, dams, weirs, and those impediments which must be altered if they are to remain at all, in order to be consistent with the altered condition of things.

2428. You stated that this road detritus causes obstruction in the rivers; has there been towards the mouth of the River Thames below London a bank formed?

I have heard it stated positively that it is so; but I have heard it equally positively declared by Sir Joseph Bazalgette that it is not so; all I know is, that the anticipation commends itself so clearly to my mind that I believe the deposit to be there, and that it will go on increasing.

2429. Lord *Penrhyn.*] Would you indicate, with some degree of correctness, the spot that you refer to when you speak of the bank towards the mouth of the River Thames, because the mouth of the River Thames is down at the Nore; do you mean down there, or considerably higher up?

I mean considerably higher up; in fact, not far below the northern outlet of the metropolitan drainage.

2430. That is near Barking Creek, is it not?

Yes. I mention it more as an illustration, a large one I admit, of what is going on, and will go on in the sewerage of towns.

2431. Lord *Ker.*] From the character of road detritus and its great weight, it would naturally be deposited, and would not be carried far down the bed of the stream?

The lighter particles would go forward, and the heavier ones would be deposited.

2432. It is heavier than most other detritus that would be thrown into the river, is it not?

It is heavy enough to sink comparatively quickly.

2433. And has it not rather the characteristic of forming into a kind of cement when mixed with water?

I cannot answer that question; I cannot say that it does.

2434. *Chairman.*] What is your next point?

The next point is the effect of intermediate obstructions in the shape of mills, dams, and weirs. I wish to say a few words upon the subject, because, although

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it is one that is pretty well understood by all persons, yet I think there is a view to take of it somewhat different to that which prevails. The effect of those obstructions which were originated before the improvement of lands and the sewerage of towns were thought of, has been to raise the beds of the rivers, and, by causing water loaded with floating matter to flow out of their beds, to raise also the lands immediately adjoining the rivers; the consequence of which has been that the rivers in very few instances occupy the lowest places of valleys; the lowest courses are side streams, consisting of waste water channels from mills, and by-washes of canals, and various other courses which thread the valleys away from the river. What I wish to mention to this Committee is, that there does exist in very many instances, if those who had the jurisdiction of rivers would look a little to the right and to the left, a means of improving the outflow of surface water in such a way as to be extremely beneficial, and to prevent, in a measure, floods.

2435. We are very anxious to hear upon that point what you propose to do under circumstances such as you have described?

Unfortunately I have not brought with me the report that I made, as consulting engineer to the city of Oxford, on their sewage works. I advised the city of Oxford on the outfall for their sewage, and when investigating that matter I could not help looking at the very bad condition of the meadows below; and I pointed out that by having regard to the side streams very much good might be done. And if I may be permitted, I will send an extract of that report to this Committee, because I believe that that illustrates what may be done in a great many valleys. The Conservators of the Thames had recommended the boating ground at Oxford to be dredged and improved. That your Grace will remember is a beautiful part of the river itself. Now I venture to say that what was proposed by the Conservators would have very little effect upon flood waters; they would have reduced the level of the water in the bed of the river, and have made the river, to my mind, an unsightly object, whereas it is an agreeable one now. Now in the plan which I recommended, I should have found a means of discharge by a connection of the side streams. What I wish to state upon this point is, that Conservancy Boards, as far as I know, in their proceedings look rather to the maintenance of the trunk river itself, and the vested interests involved in that river, than they do to taking advantage of what exists outside, or on each side of the river. It may appear to you a very common observation to make, but I am quite sure that unless we do look on each side of the river and remove obstructions in the river's course, where they are doing injury, and substitute others which will do none, we shall never have any very great improvement in rivers. My own opinion is, that with the increase of water due to land drainage, unless you look to storage to regulate the flow of rivers, that is to supply the water in times of drought, which has been saved in times of plenty, you never can accomplish any very great improvement. The retention of water power for mills and navigation seems to be the ruling object of all Conservancy Boards, and if there were those means that I have spoken of with respect to storage, and the taking advantage of side streams, you might really originate a very large amount of motive power by the increased water that you would have then at command, and so accomplish a large amount of benefit, and the avoidance of floods in a great measure at the same time. "Having expressed my views on the points referred to me, I desire to record my conviction that without the removal of floods, and the effectual drainage of the meadows immediately below Oxford, the works of sewerage contemplated by your Board will be incomplete I cannot consider the scheme propounded by Messrs. Beardmore and Leach for this purpose, and approved by the Thames Conservators (to which I have referred), as more than a partial treatment of the subject. Their plan consists simply in increasing the capacity and improving the course of the main channel of the river, and though this, no doubt, is required to carry forward the flood waters which collect in the river above Oxford no improvement of the main channel between Osney Lock and Iffley Lock will, in my opinion, free the meadows between those points of floods, or, what is equally important, enable the meadows to be effectually drained. The drainage and complete removal of flood water from these meadows can only be effected by bringing into use the back streams or side channels which follow a lower level than the main river itself, and which can be readily connected and find discharge at the tail of Sand-

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ford Lock. By a comprehensive treatment of the locks, weirs, and channels, it would be possible to use these back streams or tail waters as a means of discharging surplus surface and subsoil waters without depriving the millers of their supply; in fact, I believe their supply may be appreciably increased, and the value of the mill-power enhanced rather than diminished. If this view of the case were recognised, the necessity of lowering the dry weather water level in the main river could not be enforced, particularly as it must be manifest to everyone interested in the City of Oxford, that the lowering of the water in the most important reach of the river a depth of two feet (which would be increased in times of drought), would be highly prejudicial to its use and to its ornamental character. I have thought it necessary to refer to the views of the Conservators on this important point, inasmuch as, were my ideas of river economy and improvement recognised, it is possible that some modification of the treatment of the questions dealt with in this report would be the result."

2436. Then with regard to Conservancy Boards generally, you think that their attention ought to be more directed to such a process as you have described, than you imagine it is at the present moment?

Yes; I wish them to condescend more to details, and to look at the many small things which go to make up the whole economy of rivers, rather than to maintain what has gradually got very much out of order, from the existence of a totally different state of things.

2437. You spoke just now of the pollution of rivers, and of the road detritus that comes into rivers; do you think that a Conservancy Board would be the proper Board to deal with the question of the pollution of rivers?

Not generally, perhaps; I do not say that; but any deposition in the beds of rivers which can affect those rivers and can cause floods, I certainly consider should form part of the duty and province of a Conservancy Board.

2438. In addition to those duties, do you think that the pollution of rivers might fairly form a part of their work?

I have always contemplated other jurisdiction than that of Conservancy Boards; but as your Grace puts it, I do not see why it should not be a part of their duty; you might perhaps over-tax them, and give them too much to do.

2439. Provided it be within their power, there would be no objection to their dealing with it, as with other matters connected with rivers?

Decidedly not.

2440. Earl of *Sandwich.*] Do you know any Conservancy Board that has proper power over its river?

I do not. There is so much new matter being brought daily into the river question, such as we have been already speaking of, land drainage improvements, town improvements, and the proper mode of dealing with the impediments existing between the two extremes, that I do not think the existence of an authority acting in every way rightly is possible at this moment.

2441. *Chairman.*] You told us, under the head of storage of surplus water, that you were going to send us a paper which would explain the mode in which you thought it might be done?

I proposed, with your permission, to send in to you an extract of my report to the corporation of Oxford with regard to the meadows below Oxford, and that, I think, will inform you of my views as to the way in which small collateral streams may be made a means of better adjusting the treatment of rivers.

2442. Marquess of *Ripon.*] I understood you to say, with respect to imposing upon the Conservancy Boards the duty of preventing the pollution of rivers that although you thought it might be possible to do it, you have not a strong opinion in favour of it?

I have a great deal to do with rivers pollution, and I find that there is the Local Government Board as a central authority with the several local authorities in existence, therefore I do not contemplate the addition of another, which I understood to be the point which his Grace put.

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2443. *Chairman.*] No; my point rather went to this, that in cases where it could be done, a Conservancy Board should be set up as the authority to deal with the pollution of rivers, of course setting aside and in substitution of other authorities?

I think that it would be a very good thing to have one central authority for each new system; you will have had before you the difficulty of dealing with rivers of different sizes and characters.

2444. Marquess of *Ripon.*] Do you think that in the manufacturing districts one authority like the Conservancy Board of a single river could deal with that river, where it runs through several large manufacturing towns?

Yes, I do. I can answer your question rather closely. I am consulting engineer for the town of Dewsbury, on the Calder. I have advised, too, on the treatment of the sewage of several other towns on the Calder, and I believe that nothing would be more beneficial to the district than the establishment of a Conservancy Board for the whole river.

2445. Which would deal with the question of sewerage?

Which would deal with all the questions involved in the economy of that river.

2446. And which should deal with the question of pollution in the case of all the various large towns and manufacturing villages that are upon the Calder?

I assume that the law will determine what is pollution and what is not; if the law were very clear upon that point, and the Conservancy Board had good data to act upon, I can conceive no better thing than the existence of a Conservancy Board, even for the River Calder, and the River Calder, I expect, is one that would exactly meet your question.

2447. Earl of *Sandwich.*] But as there is no Conservancy Board which as yet has done its duty properly, you would not add a fresh duty to it, would you; you would have a fresh system altogether of managing the river, I suppose?

I will illustrate my answer further by again speaking of Dewsbury, and the town which is immediately above it, Batley. Dewsbury is on the River Calder proper; there is a side stream which brings down the sewage of Batley through Dewsbury into the Calder, and there are antagonistic interests there involved, which it would be most desirable that one presiding authority should deal with.

2448. Duke of *Northumberland.*] You are aware, are you not, that under the present system one town is able to inundate another with the pollutions which it produces, and that it has a separate jurisdiction which enables it to do so?

Yes, that is so. Of course there is an obligation on the upper town of rendering its effluent water pure, or at any rate so far improved as to be innocuous, and in the case I speak of upon the Calder, the upper authority claims to have done that; but still there are contradictions and difficulties which a presiding authority would deal with most advantageously.

2449. Lord *Penrhyn.*] Were you examined as a witness before the Committee which sat in this House three or four years ago upon the pollution of rivers generally?

No.

2450. Duke of *Northumberland.*] You spoke upon the storage of water; the natural place of storage for the water is the sub-soil or the sub-strata, is it not?

There are some strata that are water-bearing strata, and others that are not. Those that are water-bearing, that is, water-holding, are the best reservoirs that you can possibly have.

2451. In towns that source of water is completely cut off as being unwholesome, is it not; according to sanitary advice, no one uses wells or sources of water rising in a town, do they?

The water of shallow wells is objected to as being the worst character of water that can be used; the water of deep wells, on the contrary, is considered to be the best.

2452. Is it not the case that in many towns the water from shallow wells, which is rejected as being unwholesome, would be perfectly sufficient for the supply

supply of the town for all the ordinary purposes, except drinking, for which water is supplied, such as water-closets, washing, and so forth?

There is a very great difference between shallow wells and deep wells; shallow wells are those which are fed with water directly from the surface, with, in fact, the rain that we have been speaking of, that descends through the soil to the level of those wells, taking with it any putrescible matter that may be resting on the surface or permeating the soil from privies or other dirty places, and therefore the water of shallow wells is generally condemned as drinking water; it might be useful, if it were economical to raise it, to use it for other purposes.

2453. Have not many of those towns wells, and other sources within their area, which would supply them with water for many purposes, which water they are now obliged to fetch from a very great distance at a very great cost?

It is often so.

2455. Has a double service been attempted in any town that you know of?

Yes, it has been attempted in Shrewsbury, and is now in existence; water for drinking purposes is obtained from one source, and water for other purposes from the Severn.

2456. Do you approve of that system?

It is very expensive, but it is a very good system, no doubt.

2457. Is it more expensive than it would be to bring the same amount of water from a great distance?

That is a question opening up so many other questions that I can hardly answer your Grace; but what I mean to say is this, that involving as a double service does the existence of two systems of pipes, it must necessarily be more expensive than one.

2458. Lord *Somerton*.] I understand you to say that one of the means that you would employ in dealing with floods is storage of water?

Yes.

2459. Is it your opinion that any system of storage upon a very large scale would have any appreciable difference upon the intercepting floods?

No.

2460. I understood you to say that that was one of the means that you would employ in dealing with the floods?

Yes; but I should adopt storage as a means of supplying the rivers with water at times of drought and scarcity, and also of supplying water to the inhabitants of the district, because though you would not use storm-water directly for the domestic supply, you would probably take pure water from the unpolluted portions of the river and compensate it out of the reservoirs, so as to maintain the river flow.

2461. But no amount of storage would have any real effect on floods, would it?

Not to any great extent. But reverting to a question asked me by his Grace the Duke of Northumberland, let me say that it would be possible in many of the upper valleys and districts to sink shafts down into the water-bearing strata, and let down the floods from the surface into those water-bearing strata, I believe that you may reduce floods very considerably by an arrangement of that sort. You probably have had before this Committee the fact, that they raise at Thames Head 3,000,000 gallons daily and turn that quantity of water out of the water-shed of the Thames into the water-shed of the Severn, in order to maintain the navigation of the Thames and Severn Canal; and what I wish to present to the Committee is the proportion at which I am prepared to see people smile, that in the upper valleys of the river, where floods congregate, shafts may be sunk through the upper crust of earth to let the water down into the lower, and make up for that which is being taken, as in the case of the Severn Canal, out of one river system and put into another.

2462. Lord *Penrhyn*.] That water which you speak of as being taken out of the Thames catch water for the use of the Severn, is taken not from the bed of the river but from the natural storage of that water down below the surface, is not that so?

Yes, that is so; and what I have sketched as a proposition is, that where

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water collects on the surface in valleys, by sinking shafts through the impervious bed that holds the water up, you may let that water down to recoup the water that has been taken out of the water-bearing strata below.

2463. Would not that proposition be rather hostile to the argument that you used just now, that all the water that caused the flood was rising and taken out of the drains instead of falling?

No, I do not think so at all; I simply stated the fact that no water runs out of the drain until the soil beneath it is full.

2464. Lord *Winmarleigh.*] Amongst the impediments in rivers you mentioned weirs and other reservoirs, have you ever found any obstruction to the drainage of any country by means of old bridges across the streams?

Yes.

2465. Very frequently?

Very frequently.

2466. And have those bridges chiefly been bridges liable to be constructed by private individuals, or by counties or hundreds?

There have been as many of one sort as the other. County bridges are not always built properly, nor are private bridges.

2467. In the case of hundred bridges that is much the same, is it not?

That is so.

2468. But you think that there are a great many bridges across many streams which are serious obstructions to the drainage?

It is daily occurring to me in my practice to find it so.

2469. Would you recommend that in any Conservancy Board that may be established to look after that matter, power should be given to oblige the parties who are liable, to construct more open bridges?

I think that the duties of a Conservancy Board should extend to everything which may affect the flow and economy of the river under their control.

2470. Lord *Vernon.*] What do you say about railway embankments; do you know any cases where railway embankments interfere with the flow of rivers?

Yes; I do not mean embankments so much as bridges; the works of railways certainly occasionally are impediments.

2471. Lord *Stewart of Garlies.*] When you talk of draining land by means of a shaft, what quantity of water are you speaking of?

The proposition I made has arisen out of my practice. I have frequently drained large areas to one sumpt, to one hole, and let it down into the water-bearing strata below. In Oxfordshire I remember doing so very effectually on Lord Dillion's estate; we brought the drainage of several hundred acres to one focus, made a shaft and dropped the water down into the oolite; I do not see any reason why in certain cases it should not be done, though I do not suggest it as an object of general practice, but I do not see why there should not exist means of lessening the collection of surplus water in particular valleys by such a process as that I have mentioned, under the jurisdiction of a Conservancy Board.

2472. What length of shaft would you make?

It depends upon how deep you would have to go to get to the water-bearing strata.

2473. How deep was the shaft in the case you spoke of?

Twenty or 30 feet; but we never saw a drop of water on the surface after that.

2474. Do you know the number of gallons that you get away in that manner?

I cannot remember, but it was a very large quantity in wet times.

2475. *Chairman.*] What was the diameter of the shaft?

I think about three feet.

2476. Lord *Stewart of Garlies.*] Do you think that a scheme of that kind would be generally practicable?

No, I do not want to lay stress upon it nor to take up your Lordships' time upon such a subject, but it is one that would come in very usefully in the economy and

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and management of rivers. Before you pass from storage, I should like to say a word or two. I think your Lordship was present when I gave evidence before Lord Salisbury's Committee on the Improvement of Lands. I remember having to answer some questions put by his Grace the Duke of Richmond. If you remember, the Report of that Committee touched upon the storage of water, which it recommended in these terms: "The Committee desire to draw attention to the expediency of extending the power of charging estates with the storage and conveyance of water for agricultural and sanitary purposes." I believe I was the person who made the suggestion which the Committee adopted, and I see that that suggestion is now bearing fruit. There is a Bill now in your Lordships' House, which I hope will pass this Session, called the Reservoirs Bill.

2477. Earl of *Sandwich.*] You are aware, are you not, that in some of the country parishes the only water available is water collected in ponds?
Yes.

2478. And in consequence of drainage increasing very much in those parishes, the water has been taken away, and those ponds no longer exist for household purposes?
Yes.

2479. Would not you recommend that drainage should be stopped in those particular places, and that the reservoirs should be still upheld?
I am afraid, my Lord, I should differ most essentially with you on that point. I should say, so far as the drainage is concerned, it was a good thing, because it got rid of those ponds which at best were only filthy receptacles of water, as drinking water for the people. I believe that more injury and more illness has been caused in villages by the poor drinking water out of ponds like those than in any other way.

2480. How would you act in cases where you have to go six or seven miles for water?
That is a very difficult question to answer. It is one which is pressing upon everybody engaged in sanitary matters at the present moment; but if there be a water-bearing strata beneath the clay, you have an unexceptionable source; you must sink a well, and you must combine several villages into one system and supply well-water. If you can get surface waters or the drainage waters that I have been laying such stress upon, they will be found superior waters to pond waters; they are not the best waters, because they come from lands thathave been manured, but they may be very much improved by again filtering them through the soil; this may be done by preparing a small surface of land, and running the drainage waters on to that surface, and allowing them to pass through, when they become a second time filtered. If under drainage water, which has already percolated through the land, has to pass through a certain depth of prepared soil, you may make it very superior water, but inasmuch as the water does not run all the year round, but ceases in April or May, you must adopt some mode of under-ground storage to hold the water that the villages will require during the summer.

2481. I daresay you are aware of some of the parishes I allude to, where ponds have disappeared through drainage; you have been extensively employed, I believe, in Huntingdonshire?
Yes.

2482. There are the parishes of Stuckley and Alconbury?
Yes.

2483. I allude to those parishes where they have six or seven miles to go for water, when years ago they used the pond water, and no complaint was made; it is only in modern days that we hear that the water is not fit to be used?
Yes, there is an explanation to that; it is because then we did not know what we were drinking; but we do know now.

2484. Lord *Stewart of Garlies.*] You were going to tell us about the Reservoirs Bill; what have you to say about it?
I should like to recommend it to this Committee: I believe that much of the difficulty in rural water supply might be met by the construction of reservoirs by landowners for the supply of their districts, which this Bill will enable them to do, without pecuniary loss. I should not be taking up your Lordships' time uselessly

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uselessly if I were to state the object of the Bill; the object of the Bill is to enable landowners to construct reservoirs on their estates, not only to supply their own cottagers and tenants, but to supply villages near at hand that are now devoid of water, receiving in return for that benefit, payment through the sanitary authority of the district; there would be an arrangement made between the sanitary authority and the landowner for the landowner to supply the water which is upon his estate, receiving contributions in money from those receiving the benefit.

2485. *Chairman.*] Has that Bill passed through the House of Commons?
Yes.

2486. Lord *Ker.*] Are there any compulsory powers in the Bill?
No, not any.

2487. Lord *Stewart of Garlies.*] Is it a public Bill or a private Bill?
It is a public Bill introduced by a private Member.

2488. *Chairman.*] I understand that it is not introduced by the Government, it is introduced by a private Member, and stands for second reading at this moment?
Yes.

2489. Marquess of *Ripon.*] Does it apply only to the case of reservoirs, or does it enable a landowner to supply water by pipes from a river or anything of that kind?
It will enable him to supply water in any way; it does not confine the operation to reservoirs.

2490. Lord *Winmarleigh.*] Has it not been found in these later days that the improved drainage has much effected the supply of water to towns owing to the manure which has been put upon the land?
It has been proved that rivers have gradually become less and less pure, and their condition is due to the water which passes off from the surfaces of land into the river.

2491. Formerly it was always maintained by people who paid attention to the subject, that surface water was the water which was most eligible for domestic purposes?
Yes, from uncultivated lands.

2492. And I believe there has been a great change amongst people in the scientific world upon that subject in consequence of the different state of agriculture, and of the manures that have been put on the land?
Yes. There is no doubt that at one time the river waters were very good; as agriculture proceeded, and artificial manures were added to animal manure, the rivers became worse and worse until they have arrived at their present condition; there is a very strong view prevailing that rivers are no longer fit to supply water for domestic use.

2493. *Chairman.*] There are two other points upon which I should like to ask your view; one is, as to the division of the areas which should be governed by Boards of Conservancy, supposing it to be right that those boards should be established for the purpose of dealing with each river; and the other point is, what should be the duties of those boards when established. Have you turned your attention in the first place to the division of the areas which should be governed by the Boards of Conservancy?
My opinion is very strong that there should be a presiding Conservancy Board co-extensive with the river, let it be ever so large; but that when the catchment basin extends beyond, say 1,000 square miles, there should be a division of the area with one presiding authority. Such a rule as this would be applicable, that no Conservancy Board should have under its control more than a length, say, of 50 miles, and an area of 1,000 square miles, and that if there are several branches to a river, each branch should have its subordinate authority, and that delegates from those small authorities should in conclave represent the paramount authority.

2494. Marquess of *Ripon.*] What would you do in such a case as the Yorkshire Ouse, which is an exceptional case; the catchment basin of everything which

which falls into the Humber would include pretty nearly the whole of Yorkshire, and the greater part of Nottinghamshire; it would include the Trent, the Aire and Calder, the Ouse, and other rivers; would you clasp all those rivers together under one Conservancy Board, or would you break them up into independent jurisdictions?

I should think that as there is one mouth and one trunk to receive all the tributaries, the portion common to all should be under the united jurisdiction of the several representatives from the sub-divisions.

2495. But even in such a very large case as that, you would be in favour of having some one superior authority, would you not?

Yes.

2496. You would not break it up, would you?

I would break it up into sub-divisions.

2497. But you would keep one authority over the whole?

I suggest that, because there is one common ground, namely, that part of the river which forms the outlet of the trunk from the point where it receives its tributaries.

2498. Have you considered the question of the area which should be rated to any drainage works; would you extend the rating in any degree whatever to the upper lands, which obtain no benefit from the drainage works, but which, in accordance with the opinion you have expressed, by the outfall of their waters increase the liability to flood the lower lands?

I should decidedly think that they ought to contribute; the exact proportion is another question. Those who do mischief ought to pay for it, and that the upper lands and small towns and villages on tributaries certainly do cause evil, I have no doubt whatever: causing that evil, they ought to contribute to the cost of removing it. Still, nature has placed the lower lands where they are, and as it will cost much money to remove the floods, and they will derive the greatest benefit from the improvement effected, they ought to pay in a greater proportion.

2499. But still some proportion, you think, might be fairly laid upon the upper lands?

Yes; and let me say why: the jurisdiction of the conservancy of the Thames, I think, extends only to three miles on each side of it; if the Conservancy Board have jurisdiction over the whole area of the Thames, it would certainly not allow many things that are now taking place outside the three miles. I might better illustrate what I have to say by reference to the River Lea. I happen to live in the water-shed of the River Lea, which is a branch of the Thames; but there is a separate conservancy, and their control is limited to a certain distance from the trunk. Now, I live in the parish of Stevenage, and the parish is just now undergoing some sanitary operations. We have a population of 2,500, and the sewage of that place will be concentrated and discharged into a small tributary of the Lea. The Lea Conservancy Board have no jurisdiction over that tributary, and, I presume, we shall be allowed to do what we like, as in the case with every village similarly situated in the same catchment basin.

2500. Earl of *Sandwich.*] Is not the water of the Lea supplied to London for drinking purposes?

Yes, the Lea supplies the eastern part of London with drinking water; and the sewage of these 2,500 people will find its way into the Lea, though it will take some little time to arrive there.

2501. You mean that that would be the case; it is not so now?

It is so now, as far as the unimproved condition of the place allows it; but when the sewage is concentrated by a system of sewers, and is changed in character and volume, that sewage will get into the Lea, the Lea Conservancy Board having no jurisdiction to prevent it.

2502. Can no Conservancy Board prevent it?

There is a Conservancy Board of the Lea, but its jurisdiction is limited to a certain distance on each side of the main trunk of the river, and it is therefore impotent against such abuses.

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2503. But have not the water company some power over the Lea?
I am not sufficiently acquainted with the facts to answer that question.

2504. Duke of *Northumberland.*] If there were a Board of Conservancy constituted, as you suggest, they would have the power of maintaining the banks, providing for outfalls, and, in short, doing all the works required to prevent floods, and to facilitate navigation in the river?
Yes; I think such a jurisdiction as a Conservancy Board could exercise should extend to the prevention of floods, to water supply, to sewage disposal, and even to the use of water, where you have a surplus quantity, for agriculture and irrigation.

2505. *Chairman.*] Would there be any difficulty in arriving at the amount to be contributed in this area by the different properties in it?
I do not think there would be; you might, so far as the lower lands of the valley go, adopt certain limitations of height, as, I believe, the Commissioners of the Thames Valley Drainage have done; and there might be one general charge over the remainder of the water-shed.

2506. It would be an acreage rate, would it not?
Yes, or an *ad valorem* one.

2507. Supposing it was an *ad valorem* rate, how would you arrive at that rate?
I do not see any reason why we should not take the parish rates.

2508. Lord *Penrhyn.*] That is what you mean by an *ad valorem* rate, the sum at which the rate stands in the parish rate book?
Yes.

2509. Not according to the benefit that the land would derive from the drainage works?
No; I was having regard to that part of the district above the portions which would derive actual benefit from the works. I was thinking of those portions that would cause the mischief quite outside the margin of actual improvement.

2510. But we have had evidence that in some cases where those sort of works have been carried on, the taxation has been levied according to the benefit that would be derived by the works executed, but that is not your idea, as I understand?
No, not exactly; on the Nene, on which I was a Commissioner, there were two taxes; one was the outfall tax, which was one general charge, and then there was the *ad valorem, qua* actual improvement, on the remainder, and those two made up the entire payment.

2511. Marquess of *Ripon.*] You would tax the people according to the benefit they derived, and you would tax the people who did the mischief by their drainage to the lower lands, in proportion to the mischief they did?
No; the first part of your proposition is what I should myself propose, but I should have one uniform small charge over the whole of the river basin, exclusive of those lower parts which would derive direct benefit from works.

2512. *Chairman.*] Having arrived at the point which you would think advisable, namely, that there should be Boards of Conservancy as you have described them, set up in various parts of the country, and having told us what your views are as to the rateable duties of those Boards, what would be your idea as to the general duties of the Conservancy Boards?
I do not think I could express it better than I did a little while back, by saying that the Boards should have jurisdiction over navigation, water supply, sewage discharge into rivers, mills and weirs incident to the use of water as a power, and those agricultural uses of the river such as the supply of water for irrigation which might result from the works. In the fens we all know that fresh water is a great element, and a very valuable one, and the supply of water to cattle is worth paying for. I should include that, and I am satisfied that much might be done in the way of water irrigation where it was desired by landowners by a proper use of the water at command by storage, and otherwise.

2513. Viscount *Eversley.*] Would you allow the Conservancy Board to interfere with the drainage of the upper part of the watershed?
No, I do not think it is necessary in any way. I speak of land drainage in contradistinction to sewage disposal or river pollution.

2514. Lord *Penrhyn.*] According to your view no proprietor of land could even make a water meadow upon his own property without the leave of his own Conservancy Board?
If it was within certain limits of height of main channels.

2515. If it was within the area of the Conservancy Board?
I do not say that.

2516. Would not it be the case if they had jurisdiction over all water meadows, that no proprietor could make a water meadow without leave from the Conservancy Commissioners?
I should be very sorry to make such a proposition. I say co-extensive with the area over which the actual works would extend; that is, in the valleys where river improvement works would be made, it is right that the Conservancy Board should have jurisdiction even over private works of landowners, because it is very possible that an owner might abuse his opportunity and his position and do something to militate against the works of the Board.

2517. How would you limit that area of works?
By height above the river level, say 10 feet; all works coming within the 10 feet height should be under the control of a Board, such as you would constitute of gentlemen and landowners, modified in any way that might suit the special character of the river.

2518. Lord *Vernon.*] Would an embankmnt be one of the works that you would put under the Conservancy Board?
Decidedly.

2519. How would you propose if a proprietor wanted to irrigate his land, that he should get the water through the embankment?
That is a matter of detail which would be easy of adjustment.

2520. It must be under the control of the Conservancy Board?
Yes, anything that would affect the river ought to be under the control of the Conservancy Board.

2521. Then it comes to what the noble Lord said just now, that a person who wished to irrigate his land could not get water without the permission of the Conservancy Board?
Decidedly, if within the 10 feet height.

2522. Lord *Penrhyn.*] And he could not put up a mill to turn a threshing machine on his own farm, or to do anything which is done by water, without the leave of the Conservancy Board?
Most decidedly he ought not to do it. I believe that with proper river conservancy, we may increase the water motive power in this country, and such a work as you contemplate would be one of the things which would be fostered by a Conservancy Board, as a means of paying the expense; they could originate water power, and offer it to landowners, saying, "We have concentrated water at a certain point, and there is five, six, or eight feet fall, will you utilise it; if you utilise it you must pay for it." I think a great deal would be done in that way.

2523. Earl of *Sandwich.*] If you were a miller you would do away with your waterworks directly, and have steam, would not you?
Water is now being used by many millers from habit, which might be dispensed with, and steam advantageously substituted in lieu of it.

2524. Lord *Somerton.*] But if the Conservancy Board had the complete control and power within a certain area, a landowner would not be even able to plant without the leave of the Board?
I really think that there is some misunderstanding in your mind about that; the area which would be covered by the height of 10 feet is very limited, compared with the entire basin of a river watershed.

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2525. But on the bank he would be unable to plant, would he not?
On the river bank, if it was subject to works; there might be many streams which the Conservancy Board would never desire to interfere with; but where you are dealing with a main river, the meadows on both sides of which are subject to floods, a certain height would be fixed as a limitation over which the Board would have power, *qua* works, and necessarily over the works of landowners, who perhaps would do something which would militate against the general scheme.

2526. Lord *Penrhyn.*] Then, even though the whole stream belonged to the landowner, and was included in his property, you would give the Conservancy Board power of allowing or forbidding any work, even such as an undershot to a small mill, or anything for which he might use the water which was his own property on his own land?
If the land was subject to floods, most decidedly I should. I should make it one of the most stringent things which could be enforced; the establishment of a mill by a private owner would in nine cases out of ten do harm.

2527. I am not speaking of overshot mills, but of undershot mills, where the stream was upon his own land; in that case you would give the Conservancy Board exclusive control?
Yes, many landowners would be on the Board to protect their common interests, and there would be no practical objection to anything of the sort.

The Witness is directed to withdraw.

MR. WILLIAM LAYTON LOWNDES is called in; and Examined, as follows:

Mr. *Lowndes.*

2528. *Chairman.*] I BELIEVE you are a Magistrate for Shropshire, and Deputy Chairman of Quarter Sessions?
I am.

2529. Are you one of the trustees under a local Act passed in 1772, for maintaining a towing-path on the River Severn from Bewdley Bridge to Colebrook Dale?
I am.

2530. What is the distance of it?
Twenty-four miles is the length of the path.

2531. Is there any other authority upon that part of the River Severn?
No, there is no other authority either for improving the navigation or keeping up the towing-path.

2532. Have the trustees power to take tolls and keep the path in repair?
Yes, they are empowered by their Act to take tolls.

2533. And also to cause obstructions in the river to be removed?
Yes, and to dredge the river and embank it, and pile the walls; to keep the banks in order.

2534. Generally to keep the 24 miles in order for navigation?
Yes.

2535. Is that part of the country over which you have jurisdiction subject to floods?
It is subject to floods; the floods rise very quickly from the Welsh mountains, and they fall quickly also.

2536. What power have you under your Act for dealing with those floods?
We have no power under the Act, and never have had control over them in any way.

2537. What effect have the floods, generally speaking, in a series of years had upon the land in the neighbourhood of the river?
Summer floods do great damage to hay crops. I do not think winter floods do much harm.

2538. You think that mischief done by summer floods to the hay crops more than counterbalances the good that may be done by winter floods?
Summer floods are not so common as winter floods.

2539. Would you think it advisable, supposing you had the power to exercise it, to endeavour to prevent floods in that neighbourhood?
That is a question that I could hardly answer; I am not sufficiently technical to answer it. I am rather wishing to speak with regard to the navigation of the river and of the towing-path; there is no Conservancy Board there, supposing the trustees are unable to enforce the proper powers given them under the Act.

2540. I understood you to say that you have power under your Act to levy tolls?
We have.

2541. For the maintenance of the towing-path along the side of the river?
That is so.

2542. In the event of the tolls not being sufficient on the river to maintain the towing-path, the towing-path would naturally go into decay?
It would.

2543. If the towing-path is in decay, then the river, for purposes of navigation, cannot be made use of?
It would be practically closed for navigation.

2544. Therefore your trust would come to an end; you would have nothing for which to be trustees?
Our trust has practically come to an end; the tolls have fallen off now. At one time they were 1,200 *l.* a year; then they were about 800 *l.* a year; but since 1861 or 1862 they have fallen down to 500 *l.* or 600 *l.*, and last year they were only 130 *l.*

2545. Has the increased railway accommodation in that neighbourhood had any effect upon the navigation of the river?
I think the tolls have fallen off in consequence of the Severn Valley Railway taking a good deal of traffic off the river.

2546. So that you have the navigation to keep up and no means of doing so?
That is so, because the cost of keeping the path in repair does not depend upon the amount of traffic; the path is washed away by floods, and damaged in other ways; it is not the wear and tear from the traffic, but from floods and the slipping of the banks on each side.

2547. It being the case that the tolls arising from the navigation do not enable you to keep up the towing-path, which towing-path may be destroyed by floods and other accidental circumstances, what would be your suggestion as to the necessity of creating any further rating power?
The trustees had a meeting at which it was determined that they could not possibly go on as they are, and that they must go for a repeal of the Act in order to get rid of their liabilities, and they hoped that some other body might be invented to carry on the work.

2548. Is that navigation of much importance to the district?
I think it is; it is important in two ways; if there was no navigation the railways would have the rates of carriage entirely in their own hands, and there is still a certain amount of traffic goes down from Colebrook Dale and elsewhere, heavy goods, such as iron, coal, and bricks.

2549. Which must be a traffic drawn by horses?
It is a traffic drawn by horses; there always was a foot towing-path there before this Act was passed 100 years ago, and the Act was to substitute for the foot towing-path a horse towing-path.

2550. Earl of *Sandwich.*] If they used a small steamer upon the river, would not they be able to compete with the railway?
A steamer was tried at the time of the making of the Severn Valley Railway, but they could not use it; there are no locks in the upper part of the river; the water is kept up by fords, and when the water is low it is very difficult to navigate, and they could not work with the steamer at all.

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2551. *Chairman.*] Your idea would be that some authority should be constituted for maintaining the navigation, something like a Conservancy Board, with power to rate?

With power to rate.

2552. Where would your rating powers extend?

The district is 24 miles from Bewdley Bridge to Colebrook Dale.

2553. That is the rating area in point of length?

Yes.

2554. How far would you go inland?

Supposing that the authority were chosen from the different sanitary authorities through whose district the path passed, it would require a very small rate indeed to keep it in order; and it must be over a large area, because there are certain parts of the path, which are extremely expensive to keep in repair from the nature of the ground, from the banks slipping, but which must be kept in repair in order to keep the road open.

2555. Would you give to this new body that you propose to constitute, power over floods and matters over which now you have no jurisdiction?

That is a point that I have not considered.

2556. Then your evidence would merely be upon the question of the improvement of the navigation which now exists between Colebrook Dale and Bewdley Bridge, or rather you would seek to get increased power to enable you to levy a rate other than what you get now, by means of a toll?

That is so; the present body of trustees were constituted by an Act passed 100 years ago, and those powers are now obsolete.

2557. You have heard Mr. Bailey Denton's evidence with regard to dividing the various rivers of the country into Conservancy Boards, under certain regulations which he indicated; do you think that if the River Severn were so treated, the difficulties under which you now labour might form part of their jurisdiction?

I think that they might.

2558. And if your Act were repealed, all the increased powers which you now seek would be relegated to them?

I think that that might be done.

2559. In the event of your proposal being carried into effect, it would have the effect of taxing all the various sanitary authorities through which this part of the river goes, and you might be taxing persons who would gain no benefit whatever from the traffic which would be carried along your river?

Except in so far that there is an indirect benefit to the neighbourhood from the traffic being kept open.

2560. They might not want to use iron or coals?

Anything that keeps up the prosperity of the neighbourhood, benefits all the parishes around.

2561. You also told us that the keeping up of the navigation would be an advantage, because it would keep down the tolls upon the railway?

If there was no competing line, the country would be entirely in the hands of the railway as far as rates are concerned. I may say that the trustees have spent very large sums of money in the improvement of the navigation of the river; keeping the path in repair and improving the navigation used to cost from 400 *l.* to 600 *l.* a year, and in our times of prosperity we funded a considerable sum of money, but since 1861 we have been existing by gradually selling out consols, and we have been keeping the path in repair in that way; those funds have now come to an end, and we must come to an end too, and we are very anxious that there should be some means by which the path should be kept in repair, and that the navigation should be kept open instead of being actually stopped.

2562. Then, in point of fact, your evidence would go rather to endorse what Mr. Bailey Denton stated, that unless some Board of Conservancy is set up in your district, that which you consider to be an advantage to the neighbourhood, and

and which has been in existence for the last 100 years, must altogether come to an end?

That is so.

2563. Duke of *Northumberland.*] And the River Severn would cease to be navigable?

The River Severn, in the upper part of it, would certainly cease to be navigable.

2564. Lord *Ker.*] What means have you taken to prevent the damaging of the river banks by floods; by dredging the river and raising the banks?

No, by piling and building retaining walls; as the banks of the meadows are washed away, we go further inland.

2565. Do you think that any works that you have executed upon the river have had any effect of increasing or diminishing the floods upon the neighbouring lands?

I cannot say that; our improvements have been rather with regard to the navigation than with regard to the floods.

2566. You have occasionally had to raise an embankment, have you not?

No, I do not know of any embankment in that part of the River Severn.

2567. I mean an embankment to keep the river more within its proper area?

No, the meadows are level with the river; there are no embankments above the meadows.

2568. So that your works have had no effect upon the floods?

No.

2569. Your attention, perhaps, has never been directed to the floods?

No; they rise very quickly, coming off the Welsh hills, but they fall very quickly also.

2570. Duke of *Northumberland.*] Has your Trust power to erect embankments?

There is no power under our Act to erect embankments.

2571. Lord *Vernon.*] Have your rates altered at all since the railway was established?

We have raised the tolls on the river; until 1876 they were 4 *d.* a mile; we have power to take 6 *d.* a mile, but we never did take more than 4 *d.*; the last two years we have had 6 *d.*, but the result is that it is practically without effect.

2572. Then your condition is due entirely to the state of the river banks and the river?

Partly to that, and partly to the railway.

2573. Lord *Ker.*] The cost of maintaining the path has been 450 *l.* a year, as I understand?

We used to spend that; then when there was a very high flood, and land was washed away, we may have had to spend 400 *l.* or 500 *l.* in addition, for one particular piling and walling, but for the last few years we have not been able to do this.

2574. This cost, whatever it may be now, would be spread over the district?

Yes.

2575. Not for the benefit of the land, but to keep up the navigation?

It is a benefit indirectly to the neighbourhood.

2576. It would not prevent floods or make the river more useful, or less damaging in any way; it would only keep up the navigation; that is the sole object that you would have in view in imposing the rates?

Yes, that is all; I am not talking of floods. I have not turned my attention to them.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Monday, the 25th instant, at Twelve o'clock.

Die Lunæ, 25° Junii, 1877.

LORDS PRESENT:

Lord President.	Lord Vernon.
Duke of Northumberland.	Lord Stewart of Garlies.
Earl Cowper.	Lord Ker.
Earl Stanhope.	Lord Penrhyn.
Lord Monson.	Lord Somerton.

The LORD PRESIDENT, in the Chair.

The Earl of MALMESBURY, G.C.B., Examined.

Earl of *Malmesbury*, G.C.B.

25th June 1877.

2577. *Chairman.*] I believe you reside in Hampshire?
Yes.

2578. And you are well acquainted with the three rivers there; the Avon, the Stour, and the river which was formerly called, and is still sometimes called, the Herne?
Yes.

2579. I suppose your estate takes its name from that river?
Yes, I believe so.

2580. Probably your attention has been drawn from time to time to the floods which those rivers have occasioned in that part of the world?
Yes, floods are very prevalent.

2581. Have you formed any opinion as to what is the cause of those floods?
I know of no obstruction but that of the mills. I think that the mills obstruct the rivers, and increase the floods.

2582. What is the effect of the floods upon the surrounding land?
That is very different; for example, for the Stour we always want five or six floods in the year, and what the water brings down is deposited, and is very enriching; it is a very fine marly deposit. On the other hand, where I have a farm on the Avon, the water is pernicious, because it comes through the New Forest, and is impregnated with a great deal of chalybeate matter, which does more harm than good to the meadows; on the other river, the Herne, which is a small river, about 20 miles long, the occasional floods are beneficial.

2583. Then you would be averse to anything which would do away altogether with floods in that district?
Yes.

2584. Are those rivers under any sort of management?
None; the tenants look to the millers as much as possible to keep them in order, and to see that they have their hatches up, and watercourses open when the water rises; I know of no obstacle in either of the rivers, either natural or artificial, except the mills.

Earl of *Malmesbury*, G.C.B.

25th June 1877.

2585. There is no public body, or Board of Conservancy, or anything answering to that description?
None whatever.

2586. Would it be desirable, in your opinion, to constitute a Board of Conservancy for that district?
It would occasion a great deal of interference with private property, much more than would be repaid in any other way, I think.

2587. Then, so far as your neighbourhood goes, you are content with the state of things as it is?
Yes. I do not see that anything can be done unless the mills were pulled down; but that opens up a great question.

2588. The pulling down of the mills would entail a considerable interference with property, would it not?
Yes, and in other respects too; it would alter all the fords of the country, because there is almost always a ford below a mill, and it is impossible to calculate what alterations in the bed of the river would be occasioned if you pull the mills down.

2589. You say that the tenants keep the millers in order; do they find much difficulty in doing that?
Not with regard to the mills that I know of; there is a high-water mark, which they are obliged to keep to, and the tenants very soon complain to the miller if they find it is not observed.

2590. Then there is no outlay of money for the purpose of keeping the river banks in order, or anything of that kind?
We have always to go to considerable expense to keep the banks from falling in, or being undermined, and to prevent the river from changing its course; that is done very much by planting a particular kind of osier, which grows rather horizontally, and is kept short; but it keeps the banks together, and prevents them from falling in. The Avon is a river full of eddies, which are very capricious, and alter very much; and to keep the river straight requires a good deal of attention, and that is the way in which we do it.

2591. That is done by the owners of property on the river, is it not?
Yes, on the river each owner has an interest in not having his own land knocked away, and it is done very regularly.

2592. And with success?
And with success.

2593. Have you any acquaintance with any other rivers except those that you have mentioned?
No, only those three.

2594. Is there much agricultural drainage in that part of the country?
Not upon my property; it does not require it; there was some done some years ago, but none is being done at present; there has been a good deal of bog near me reclaimed so as to make it carry cattle; within my recollection it is very much improved.

2595. Has that added much to the quantity of water brought down?
No, I think it carries it off more quickly; it does not lie so long upon the ground.

2596. The Duke of *Northumberland*.] You mentioned that the deposit from one river was injurious?
Yes; there is a good deal of iron matter in it.

2597. Is anything required in the way of works to prevent those floodings?
I do not think so; the water I speak of comes from the New Forest for several miles into the Avon; in the other river, the Stour, the deposit is very enriching and very good.

2598. But in order to prevent damage done by the silicious and ferruginous water coming from the New Forest, are any works required?
No, I should not think so; the brooks flow into the rivers, and I do not know what other outlets there could be from the forest.

2599. The

2599. The damage would be very partial, at all events?
Yes.

2600. As regards the millers and the tenants, the remedy of the tenant, if flooded by the miller, is, I suppose, by action between themselves?
Yes, but I have never known any difficulty to arise; if the millers open their hatches after heavy rain and at night, nothing can be said to them, and I think they do that very fairly.

2601. In short, you are of opinion that there is no necessity for interference in the way of legislation between the tenant and the miller?
I think not.

2602. Lord *Somerton*.] You said just now that a good deal of mischief was done by the floods on the Avon in consequence of the water being impregnated with iron which came from the forest; though that does happen, is it not the case that the water also contains a great quantity of chalk, which comes down from Salisbury and the upper part of the river?
Yes; it is not contaminated until it gets opposite the brooks from the forest.

2603. You imagine, I suppose, that that chalk tends in a certain degree to destroy the evil properties of the iron?
No doubt.

2604. We have had it in evidence from one witness, that he advocates, as most of the other witnesses do, a separate Board for each catchment basin; but he goes further, and I see that he advocates the taking away from the private riparian owners all control over the management, not only of the banks, but of any land which was not more than 10 feet above the summer level of the water; you are very likely acquainted with the district in which that state of affairs exists, and to a very large extent?
Yes; in the Avon for 25 or 30 miles, I should think.

2605. And what breadth?
In some places a mile or a mile and a half, I should think.

2606. And the whole of that district, I believe, is not more than 10 feet above the summer level?
No, I believe not.

2607. Would not you consider it rather a strong measure to take the whole of that district out of the hands of the private proprietors, and hand it over to the management of a Board?
I consider that the people interested are the best people to manage it, and they would manage it better than any Board or inspector.

2608. Earl *Cowper*.] Are floods more frequent in your part of the world than they used to be?
No, they are not; they are very much the same. I looked at it in a journal that has been kept at my house for a great number of years, about 50 years, and I see they come periodically about the same time, and last about the same time; I do not think that there is any difference; we know exactly the time during which the water is coming down after the fall of rain has ceased; it is more difficult to calculate it in the Avon, because it has much further to come, but in the Stour we can always calculate it.

2609. Last year was a very great year for floods in your part of the country, was it not, as well as everywhere else?
They were almost permanent, for it rained every day for two months.

2610. Lord *Vernon*.] You said just now, that on account of the value of irrigation it would be better to do away with floods?
Irrigation is not the word; in the Stour, if there were no floods, if any means were discovered to prevent floods altogether, the deterioration of the land would be immense.

2611. Can you give the Committee any idea of what the depreciation of rental would be between flooded land and unflooded land?

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My meadows let for 3 *l.* an acre; they are not water meadows, but natural meadows.

2612. Have you any meadows at all, anywhere, by which you can compare the value of flooded land and unflooded land?

Yes; some are not worth more than 15 *s.* an acre that are higher up and seldom flooded, but it is a very light soil.

2613. Have the railway embankments in the neighbourhood had any effect upon the flow of the flood?

No, not that I have heard.

2614. Lord *Penrhyn.*] When you speak of the tenants keeping the millers in order, does that always apply to inducing them to keep the hatches open to reduce the quantity of water, or sometimes do they find it convenient that the hatches should be closed for the purpose of flooding?

No, always to let it off.

2615. Has there been any scheme at any time in the two valleys, where you are favourable to the floodings occasionally, which has been frustrated by the opposition of one set of landowners against the other?

No; there has been a talk of buying up the mills, which came to nothing; but within my time I think there have been one or two mills pulled down upon the Avon.

2616. Was that scheme of buying up the mills frustrated by the opposition of certain landowners, as against other landowners?

They could not agree on the value.

2617. I ask the question with reference to the proposition that there should be one board of management over the whole area of catchment, which should have the power of overriding all opinions, and carrying out great works for the whole district; would that be desirable?

It would be a great interference with private rights.

2618. Have you known any scheme that has been interfered with by the opposition of interested landowners?

Certainly not.

2619. Has there been any proposition to straighten the course of the river to keep off the floods?

Cuts have been made here and there; but inasmuch as a cut, when made, cannot produce a quantity of earth sufficient to fill up the bend which has to be stopped, I do not think it answered.

2620. Lord *Stewart of Garlies.*] If the owners of three-fourths, or say four-fifths, of the property along the river wished to form a Board, do you think that it would be right to compel the owners of the remainder to fall in with it?

No, I do not think that it would; I think that they are the best judges, and can manage their respective estates much better themselves. They have generally agents who are intelligent men, and the lower man is certain to keep the upper man in order, or else he would be flooded.

2621. Earl *Stanhope.*] You say that mills are great obstructions and cause floods?

Yes.

2622. The river is now mainly managed by the private owners, is it not?

Yes.

2623. But the private owners have no means of removing mills constructed elsewhere than on their own property, have they?

No.

2624. Therefore do not you think that if mills are obstructions to the river, a public body should have the power of at least limiting the construction of mills in future?

I think they certainly ought to prevent the building of new mills, but these mills that I speak of will be found in Domesday Book.

2625. There have been some recently erected, have there not?
I do not know of any. I know of one or two having been pulled down, but none built.

2626. What we have heard in evidence over and over again is, that where there is a Conservancy Board for one part of a river, it has not much effect, because you have to consider the whole course of the river, and though your property is protected, it is a question whether the small proprietors in your neighbourhood have protected themselves as much as you may have done; though you have protected the banks of the river which flows through your property, have all your neighbours done the same?
I do not think that could influence the floods in any way.

2627. You have prevented damage on your own property, have you not?
Damage to the banks of the rivers, but not to the level of the property.

2628. By forming osier beds, you have prevented floods, have you not?
No, I have prevented the banks from falling in, and the river from altering its course, but the water must go somewhere.

2629. Do not you think that a Board for the whole of the River Stour would be an advantage?
I do not think so; I do not see how it could be in these three particular rivers that I speak of.

2630. Is there not a bank of sand rising at Christchurch, which obstructs the river?
Yes; there is a very curious formation, it is a sort of pebbled beach, or rampart of pebbles, running along the last two miles of the river. The river runs within that bank; between that and the mainland, and comes out at a place called Highcliffe, at present facing east; formerly the confluence of the rivers of which I speak was at Christchurch, and the river ran out due south; there are two opinions about that; when the river discharged itself straight into the sea due south, it constantly met with a stronger tide against it, and it also met with the south-west winds which are very prevalent there, and a heavy sea also. Now the river runs very quietly between this pebble beach and the mainland, and so close to the shore, and under the Highcliffe which shelters it, that there is no resistance to the fresh water.

2631. I thought part of Highcliffe was giving way, and that an obstruction was beginnning there?
Yes; but the effect is just at the mouth now what it used to be at the mouth when it was south; that is when it was a bar, but the bar is not worse than it was.

2632. Therefore no cutting through of that bar would be an advantage?
That I cannot give an opinion on; I have told you what the different opinions are upon that point.

2633. Lord *Somerton*.] Is it not the case with regard to the Avon, that even in those parts where the water, impregnated with iron, is at its worst, they get two heavy crops every year off the meadows?
Yes.

2634. And the rental value is very high in consequence?
Yes; it is not so high as the Stour meadows; it is about two-thirds upon my farm.

2635. *Chairman*.] What I understood your evidence to be was this, that, confining your remarks to the three rivers which you have given us, the Avon, the Stour, and the Herne, you consider there is no necessity for a Conservancy Board to manage those rivers?
None whatever.

2636. You think that the proprietors of the district are sufficiently alive to their own interests, and are prepared to do everything that is necessary for keeping the river within its proper course, and keeping up the banks?
Perfectly.

 2637. But

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2637. But I do not understand your remarks to apply to other rivers where there are large works required, and where, to carry out the works, it would be necessary to expend very large sums of money?
I do not know anything of other rivers.

2638. Therefore your remarks would be confined to those three rivers, and would not be taken to apply to a general system of Conservancy Boards throughout the country, where there might be large sums of money laid out, which sums of money would require to be levied upon the surrounding property?
I do not know anything of other rivers; but my opinion is, that those things are best managed by those having personal interest in them; and I should be opposed, without having considered the question much, to any further interference with private property.

2639. But where there were large works required, such as in the Ouse and the Humber, and some other large rivers in the north, would not you think it rather hard upon the owners of property in the immediate neighbourhood, if they were taxed to pay very large sums of money for benefits which might arise, not only to them, but over a much larger area than that which affected their own property?
No doubt; that is quite a different case.

2640. As a rule, I do not know that I am disposed to differ from you. You think every man ought to be allowed to manage his own property?
I think it is better done by himself and his agents, who are in these days intelligent people.

2641. Lord *Somerton.*] Is not the catchment basin of the Avon entirely distinct from the catchment basin of the Stour; there is high land between the two, is there not?
Very high land between the two.

2642. There are two distinct catchment basins?
They are two distinct valleys.

2643. Do not you think that if there was a Conservancy Board for the Avon, and a Conservancy Board for the Stour, their interests would clash very much upon that part of the river below Christchurch, where the rivers all join?
I should think very likely they would, if there were two different Boards.

2644. There are two or three miles of river from Christchurch to the mouth, are there not?
Yes.

2645. But they would have very opposing interests; the two Boards would oppose one another, I should suppose, very much in anything that was suggested?
I cannot conceive that in those rivers any Board at all would be required.

2646. Earl *Cowper.*] Is there any wish for a Conservancy Board amongst your neighbours and among the other proprietors?
No, I never heard it mooted.

2647. They are of the same opinion as you?
I think that they would be; I never asked them.

MR. ROBERT HAWKINS is called in; and Examined as follows:

Mr. *Hawkins.*

2648. *Chairman.*] You are Town Clerk of Oxford, are you not?
Yes.

2649. And you are secretary of the Thames Valley Drainage Commissioners?
Yes, I am.

2650. Are you acquainted with the mode adopted for managing the Thames Valley Drainage, as for putting the Act into operation?

I am

I am. The principles adopted in that Act were that certain parishes constituting the whole of the riparian parishes of the Upper Thames, from Cirencester to Wittenham, with the riparian parishes on the tributaries running into that portion of the Thames, were all scheduled to the Act; certain Commissioners, being landowners along the whole of those riparian parishes, were named as Commissioners in the Act, and they were entrusted with the duty of ascertaining what lands in the riparian parishes were affected by flood, or would be benefited by any of the works which by the Act they were empowered to carry out. As soon as they had ascertained that, and had laid down the land on maps and plans, they were to ascertain the whole cost of the work, and they were to make their first order stating what the limits of their jurisdiction should be; dividing the limits of jurisdiction into different districts, and stating the number of members who were to be allotted to every district board, and then the number of Commissioners which each district board were to elect. The district boards were to have control over the subsidiary drainage in their several districts, and the Central Board of Commissioners elected by them was to have the control over the whole arterial drainage.

2651. When you say the whole arterial drainage, what does that apply to?

The whole of the beds of the rivers; that is to say, the River Thames as a main arterial drain, and the different tributaries which run into the Thames, so far as it comes within the limits of their jurisdiction.

2652. I believe you had some experience of the practice in Ireland; you have been over to Ireland and have made inquiries?

I have.

2653. What is the difference between the mode which has been adopted by the Thames Valley Drainage Commissioners under the Thames Valley Drainage Act, 1871, and that which is followed in Ireland?

The difference between the two is this, that in Ireland the scheme would have to be in the first instance originated by petition to the Commissioners of Works.

2654. A petition from whom?

A petition from any landowner; any landowner may put the matter in motion, and then there must be the assent of two-thirds in value of the landowners to the proposed scheme being carried out.

2655. How was the Thames Valley Drainage Act of 1871 set on foot; what was the initiatory process?

It was set on foot under rather exceptional circumstances. The fact was, that the Thames Conservancy had, in the year 1870, attempted to get rating power over the riparian parishes on the Upper Thames from Wittenham upwards, and the landowners throughout the whole of the riparian parishes scheduled to the Conservancy Act petitioned against the Bill, and succeeded in making the Conservancy withdraw the attempt to tax them; then it was understood between the then Government and the landowners petitioning against the Conservancy Bill that something should be done by them to form a government for the upper river, and in consequence of that, his Grace the Duke of Marlborough being Chairman, the landowners brought in this Act to provide for the drainage of the whole of the Upper Valley which had been attempted to be taxed by the Thames Conservancy; and instead of dealing simply with the River Thames as the Conservancy had, they included the tributaries, making a whole scheme down to Long Wittenham; it is just about half the length of the River Thames taken from Cricklade to Staines; it is about 60 miles from Cricklade to Long Wittenham, and about 60 miles from Long Wittenham to Staines.

2656. Lord *Vernon.*] Do I understand that the Thames Conservancy have nothing to do with the Upper Thames now?

Their jurisdiction over the Upper Thames was preserved; they forced that upon the promoters of the Thames Valley Drainage Act; but clauses were inserted to enable the Thames Valley Drainage Commissioners to execute works in the bed and soil of the River Thames, with the consent of the Conservators; and if the Conservators objected to any works that were proposed, then there was to be an appeal to the Board of Trade to compel the Conservators to allow the works to be done.

2657. Then, in fact, there are two Boards at the present moment administering the affairs of the Upper Thames?

There are two Boards.

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2658. *Chairman.*] Has this Act been in operation for a sufficient length of time to enable you to say whether it works satisfactorily or not?

No works have been done by the Thames Valley Drainage Commissioners, because the first work that they had to do, and what was laid down in the Act for them to do, was defining the limits of jurisdiction; with the advice and under the assistance of the Inclosure Commissioners, they got the Board of Works to allow Her Majesty's Ordnance Survey Department to make the surveys and plans for them. Owing to continuous floods which took place, the Ordnance Department were unable to get those plans made, and those surveys taken; they were delayed; and notwithstanding every honest effort of the Ordnance Department to get the work done, the whole work and the plans, though they began in December 1871, were not completed till June 1875.

2659. Then, in point of fact, you have never yet come in contact with the Conservators?

We have not come in contact with the Conservators; but I am bound to say that I believe it is impossible that we should avoid some conflict of jurisdiction with them in the course of our work; I feel sure that there will be very great difficulties, both on money questions and on actual works.

2660. Then what are the powers given to you under your special Act; what do you deal with?

Our power is confined entirely to land drainage, irrigation, embanking of lands, and dealing with floods; we do not go into navigation at all, that is left to the Conservancy; and we have a power to buy up the mills or make any cuts; in fact, do any work which is necessary for the relief of the landowners for irrigation purposes.

2661. And have the Thames Conservators powers of the same kind?

Their powers are solely limited to navigation, and to certain powers which were given them for the preservation of fish, and for keeping the river pure from sewage for the benefit of the London water companies; they have no other powers in the river.

2662. But your powers are for dealing with the bed and the banks of the river. That would be touching a point upon which they will also have power to act?

That is so.

2663. Earl *Cowper.*] Did you say that you had compulsory power of buying up the mills?

We have compulsory powers for that purpose.

2664. You can force the owner to sell?

Yes.

2665. *Chairman.*] With regard to the position in which you say you found yourselves, that the survey was postponed, or took a much longer time than was anticipated, in consequence of the difficulties that the engineers had to contend with; what amount has the preliminary costs of survey, &c., come to?

The total expenses from 1871 down to the time of making the first assessment of rate, and getting in the first rate, and the constitution of the new elected Board of Commissioners, was 10,657 *l.* 11 *s.* 9 *d.*

2666. Upon what property was that rate levied?

That rate was levied upon 55,472 acres of land which were found to be within the level of five feet above the flood line.

2667. Lord *Penrhyn.*] Upon what principle was that rate levied?

The rate was levied upon an equal pound rate; the assessment was made at 1 *l.* an acre, and the rate levied upon that pound rate; it was practically made an acreage rate.

2668. Without any reference to the value of land or the benefit to be derived?

Yes, it was a special provision made as to this particular rate; it was not in the same category as the subsequent rates, which are all to be made on the ground of benefit.

2669. *Chairman.*] His first rate was an acreage rate, for the purpose of meeting the preliminary expenses?

For the purpose of meeting the preliminary expenses.

2670. Lord

2670. Lord *Monson.*] What was the rate?
The rate was a 3 *s.* 10 *d.* rate.

2671. Earl of *Stanhope.*] The rating was on the value of 55,452 *l.*?
Yes.

2672. *Chairman.*] That is the rate for preliminary expenses?
For preliminary expenses; and out of those preliminary expenses the survey and plans came to 4,537 *l.* 10 *s.* 7 *d.*, and the costs of two Acts of Parliament to 2,562 *l.* 3 *s.* 11 *d.*

2673. Your authorities have got powers after they have been constituted, and now that they are set up?
They have.

2674. There is the main authority, and there are smaller authorities which act under it?
That is so.

2675. And the smaller authorities have power over particular districts, have they not?
They have power over the districts for the purposes of subsidiary drainage. They may, with the consent of the Central Board, execute arterial works, but the Central Board has the right of controlling them, with a view to prevent anything like injury being done by one board to a board below it.

2676. Then when you say you have compulsory powers to buy mills, what process do you go through before you can take a mill; how is the value of the property that you propose to take compulsorily ascertained?
If the Commissioners wish to put in force the compulsory purchase clauses of the Lands Clauses Acts, they must in October or November publish and serve notices of their desire to take lands, in the usual manner required in the case of private Bills for a like purpose. They then petition the Inclosure Commissioners to be allowed to put in force the powers of the Lands Clauses Act, and the Inclosure Commissioners, if satisfied, are to make a Provisional Order accordingly, and get it confirmed by Parliament. But mills and weirs are under this special protection, that the interference with or removal of them must be first decided to be necessary, either, with consent of both parties, by justices in petty sessions, or, failing that consent, before an arbitrator appointed by the Inclosure Commissioners; and it must be decided that the injury done is such as can be compensated by money payment.

2677. Lord *Penrhyn.*] Then as to the compensation and levying the rate; is that rate levied upon a different principle from the rate for the preliminary expenses; the money required for compensation in buying up the mills?
There are powers under the Act for assessing the lands to certain purposes; for instance, if one particular part of a district was benefited by some particular work which was proposed to be done there, that particular district would be assessed alone to that work; and the compensation for the buying up of the mill would all come in the same way.

2678. Does your Act lay down any principle upon which that tax is to be levied different from the manner in which you described to us just now?
Yes; the first rate was an equal rate; all subsequent rates are distinctly to be based on benefit.

2679. *Chairman.*] Will you explain how you propose to deal with the rates that are to be levied hereafter, over and above the preliminary expenses?
The great point is the question of the assessment of lands; the principle in the Act is that all rates which are for new works, or for improvements in existing works, should be deemed special rates, and should be charged upon the owners; and the Commissioners, in order to assess the lands for the purposes of those special rates, would have to find out what was the present value, and then the probable improved value; and on the probable improved value for every different acre of ground they would have to levy their rate; it would be purely an assessment based on improved value, precisely in the same way as the valuations are made under the Irish Acts.

2680. Lord *Penrhyn.*] According to that principle, supposing a valley was drained for the exclusion of floods by the execution of large and costly works,

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those persons whose land would be saved from the floods by the works would be the persons who would have to be rated?
Yes, all whose lands would be benefited by such works.

2681. But the people who contributed to the floods by draining the land above in the upper districts would not be rated?
They would not be rated.

2682. *Chairman.*] Are the owners of property only rated, or are the tenants rated as well as the owners?
The owners are rated to the execution of new works or improvements to existing works; the occupiers would be rated to the general management and the general maintenance, when once the works were done; and there is a provision in the Act that the tenants should pay to the landlords a sum not exceeding 5 per cent. per annum on the outlay for new works executed by the landlords.

2683. Do I understand you to say that the benefit derived is made the measure of the assessment?
The benefit is the measure of the assessment upon precisely the same principle as it is in the Irish Acts. I do not know whether your Grace has seen the schedules to the awards in the Irish Acts, but they state there the original value and the improved value, and the assessment is according to that improvement.

2684. And those districts that are not benefited but create the damage are left out altogether?
They are left out altogether. The idea was that they would not be benefited; benefit has been always the principle of taxation, and they, not being benefited, would not be taxed.

2685. What I understand you to say is this, that the Central Board is the rating authority?
It is the rating authority for arterial works done by itself, but the district boards have the power of rating for their own works.

2686. Is there any appeal from the rate which these various bodies impose?
There is an appeal to quarter sessions.

2687. Is that so in all cases?
In all cases of rates and assessments there is an appeal to quarter sessions against the decision of the Commissioners.

2688. Is that power given by the Act?
Yes.

2689. Earl *Stanhope.*] Are there two rating authorities?
Yes, there are two rating authorities; the district boards rate within their own jurisdiction for their own particular works, and the Central Board for their works; but the Central Board may charge the district boards; they may send a precept to the district boards to collect a certain amount of money for works, which they ought to be charged with, done by the Central Board.

2690. Is there an appeal from both the assessment authorities?
There is an appeal from their rates and assessments to the quarter sessions.

2691. *Chairman*] What I understand you to say is, that a person may be rated under the district rate, and also be rated by the Central Board?
Yes.

2692. So that he may have to pay two rates?
Yes, but he would not have to pay two rates for the same works; the Central Board can only do works of arterial drainage, such as cleansing of rivers, and the improvement of rivers themselves; the Central Board cannot interfere in the internal management of the different districts.

2693. I understand you to say that the Central Board is elected by the district boards, who send representatives from their body?
That is so.

2694. And how are the district boards elected?
They are elected by the ratepayers.

2695. Do you have to raise any large sum of money for carrying out these great works?

If works are carried out, as they must be eventually, by some authority on a considerable scale, there will of course be considerable rates to be levied in respect of them; there will probably have to be at least 100,000 *l.* spent.

2696. Where do you anticipate spending that 100,000 *l.*, because what would apply to your case might apply to other rivers?

I believe that the idea is that it would be necessary to do a considerable amount of dredging in certain parts, and providing a much larger sluice area than there is at present; perhaps doing away with some of the mills, and in other cases widening the river in parts, and here and there making cuts, but not to any great extent.

2697. Then you would anticipate, I suppose, borrowing large sums of money upon the security of the rates?

We should require to borrow money upon the security of the rates.

2698. Then those rates would be fixed after appeal, I suppose?

I think that that is the great difficulty, and the great weakness of the system, both of the English Land Drainage Acts, and of our own Act. The appeal, I think, causes a great sense of insecurity on the part of the Commissioners in making this assessment, and it would very probably also cause a sense of insecurity in any one who was to lend the money. The question of benefit in assessing lands is a very difficult one; supposing a person to appeal to a court of law on a question of benefit, it seems almost impossible to say that he should be quite certain to fail in upsetting, or varying it in any way; the question of benefit is so much a matter of opinion, and is so difficult to get at in the improvement of the land, especially where the works have not been in operation, that I feel that there is a considerable amount of insecurity about it; and I think that the course adopted in the Irish Drainage Acts is certainly very much better than our own; the system there of making one final schedule, and getting that final schedule confirmed by the Commissioners of Works in Dublin, and making that the final test of the improved value, seems at once to me to settle the matter in a far more satisfactory way than we could possibly do under the English system, or even under the Thames Valley Drainage Act.

2699. It would be satisfactory to the governing body, but not so satisfactory to the persons who were rated, if you deprived them of that appeal?

They have the power of objection. The Inspector goes down and fixes meetings, and it is open to any of the landowners who are to be assessed to go and object to the schedule of values; the Inspector hears everything they have to say, and when he has heard them they have a certain time for setting the award aside; after that the award is confirmed, and there is an end of the matter, and those values are the final values.

2700. That would, practically, take away the right of appeal?

It does so; but I confess that I think the values so assessed are, practically, fair, and that you can never get to a certain and absolute relative equality, and that there must be, as there is in all rating for towns and everything else, to a certain extent, some little point which you might, perhaps, raise a question upon.

2701. Then you would depart from the usual rule, which now prevails in assessing property, by which the appeal is given first of all to the assessment committee, and then to petty sessions, and then to the court of quarter sessions; and in river property you would deprive persons of those appeals?

I should be inclined to do it. It may seem arbitrary, but I think the result is that you lay the rating authority and promoters of such improvements open to much danger, and might put such immense hindrances in the way of what is practically for the benefit of the whole, that I think it would be safer to do it.

2702. Do you draw that great distinction between rivers and land?

The value of land is not such a difficult thing to settle; but the question of improvement of what a particular work may have done in the way of benefiting a particular area of land in a particular situation, is an extremely difficult one; it must be a matter of opinion, and when the Commissioners have done the very best they can to ascertain what the value is, I think that there must be some limit to the power to appeal.

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2703. Would not the very difficulty of arriving at a just and right conclusion be an argument in favour of giving the appeal rather than taking it away?

I think that the appeals are more likely to arise from a spirit of opposition than from there being anything unjust done; I can only say that in the Northmoor Drainage Board, which I had to do with, Northmoor being on the banks of the Thames, it was done under the general Drainage Acts; we there appointed a committee, and the committee consisted of members of the Board, two of whom were land agents, and another a tenant farmer; they went over the whole of the 2,185 acres, which were affected, and they assessed the different values; the appeal was to the Board itself, and out of all those assessed, we only had, I think, two who appealed, and after all, they gave way and were satisfied. On that assessment we have levied rates since 1866, and we have never had any difficulty at all; but I think a great deal of that arose from the fact that they were chiefly large landowners who were concerned in the matter, who saw that there must not be too hard and fast and tight a line drawn; and that if they got within an approximate fair value, it was all that they could ask; the landlords were first assessed to the execution of the works themselves, and the tenants have been assessed ever since for improvement rates, and I have never heard any difficulty raised about them; but it is perfectly clear that if you have a very large scheme such as that of the Thames Valley Drainage, you would be sure to meet here and there with people who will raise all sorts of difficulties to your rating; I think for the sake of the large mass of owners, that it is not desirable to leave open the door for that purpose, the result of which would be that you would hinder very many good works.

2704. From the part that you have taken in the late legislation, are you of opinion that it is necessary that rivers, similarly situated to the Thames, should be under some Conservancy Board?

I think that they should be under some authority. Your Grace will at once see that, supposing the Thames Valley Drainage Commissioners began to do works on the upper river, the first thing which will happen below Long Wittenham will probably be that the landowners below Long Wittenham will complain that we are discharging water at a greater rate than they have been used to have it, and that their lands will be flooded. I do not say that that will be the fact, but I have heard that opinion expressed, and I have no doubt that the landowners below will be alive to that, and will think that they will be drowned when we have finished our works. If that is the case there must be some provision down below to deal with the river in the same way that we are dealing with it up above.

2705. Would you put the river and its tributaries under one large board?

No, I am not an advocate for one large board. I feel very strongly that in large rivers, rivers of long courses like the Thames, with many tributaries, it is not desirable to make one large board for the whole river. I know that there is a theory that the river ought to be all under one board, but I confess I think that that theory will not really bear examination; that there is really nothing in it; that the river can be managed by boards in sections, and that it is greatly for the advantage of the community, if you are to have representative boards at all, that those representative boards should not range over too large a district. If you have the boards, I contend that they should be made up of the landowners and the representatives of the towns in the district. I think that you ought not to ask the people from one district to go down to the other end of the river to meetings, or the people from the other end of the river to come up to them; and if you do it will simply end in the attendance falling off and the business being neglected, and very often considerable clashing of interests at the board itself. I think that it would be far better, in the case of very long rivers, to divide them.

2706. Supposing your view is to prevail, and that a long river was to be divided, what authority would you set up for the purpose of dividing it?

I do not think that you could very much improve on the organisation of the Thames Valley Drainage Commissioners, provided that you added to it a certain amount of representation from the towns; I think that the towns are entitled to representation, and that where they are interested, they should contribute to the taxation.

2707. Supposing

2707. Supposing that we were commencing *de novo*, some authority must map out the river and the district?

I see no reason why the river should not be mapped out in the same way as the Thames Valley Drainage Commissioners have mapped theirs out, with this difference; that is, one point, where I think the Government should give assistance. I think that the landowners ought not to be called upon to make the whole of these surveys, which are practically Government surveys. We have paid the Ordnance Department for surveying the Upper Thames, and those surveys are at the public disposal at this moment; the landowners in the upper valley have paid 5,000 *l.* for making them, and I think that that is a very fair case where we might say that the executive ought to get these surveys made; they are part of the Ordnance Survey of the country, and they should be made by the Government. The other point is the Acts of Parliament, which are a cause of great expense; in the case of the Thames Valley Drainage Commissioners, the two Acts came to 2,562 *l.*, making with the surveys near upon 8,000 *l.* out of the 10,000 *l.* I think that in that case also the Government should assist, and that it should not be left to a private Act to do a great work of that kind.

2708. You say that it is the duty of the Government to divide England into districts?

I think the Government should make up its mind what rivers it should deal with; there are certain rivers which Parliament might feel that they are not bound to take up; there are many small rivers which it might be left entirely to the landowners to say whether they will do anything or not with them; and it might be in the case of such rivers a question of permissive legislation, but I think that in the case of a river like the Thames, where you have very large interests which manifestly are put at a disadvantage by one another, and where it is impossible for them to do anything without some scheme being carried out throughout the whole, there is a fair case for the Government to take up; I believe that there are other rivers in much the same position.

2709. If it was necessary to map out the rivers of the country for the purposes of drainage, and for preserving their course and dredging, and so forth, you would think that all those cases, whether the rivers were small or large, the Government ought in the first place to take the initiatory steps, both in survey and preliminary Parliamentary expenses?

The survey and the Acts.

2710. In all cases?

In all cases.

2711. Then what department of the Government would you entrust with the duty of mapping out the country for the purposes of legislation and survey?

I confess that that is a very difficult question, because I do not know that there is any department absolutely in a position to undertake work of that kind; the body which is nearest to the Irish Board of Works is the Inclosure Commissioners; they know more about the drainage of land than any other Board; and I think that the Inclosure Commissioners are, as a rule, a very popular Board with people in the country; great courtesy and extreme readiness to assist anybody who goes to them in matters of drainage, inclosure, or any work of that kind, have become traditions of the office. I think that the Inclosure Commissioners would be a very popular Board with the people in the provinces. I do not say that they would not need some strengthening or some addition. I merely state what is my own opinion, from what I know and have heard of them.

2712. And you think that, before the Government undertook this, they would have to constitute some authority for the purpose, because, you say, there is no authority at the present time who could do it except the Inclosure Commissioners, and they are not capable of doing it?

With regard to the question as to the actual surveys, I do not propose to ask the Government to go to the extent of making sections or cross-sections of the river; I simply ask that the Government should make the surveys of the land. If there were surveys on a complete scale, and on one scale all over the country,

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half the trouble which the landowners, and the towns and people interested generally, have to contend with, in initiating a scheme of this magnitude, would be done away with.

2713. But is not the Ordnance Survey upon a large scale very much the description of survey that you are describing?

Yes; but unfortunately it is not complete, nor anything like complete; and the Thames Valley Drainage Commissioners had to pay for having the whole of the Ordnance Survey of that part of the country made.

2714. That is because they wished to have it made out of its turn, is it not?

They wished to have it made out of its turn, if it can be said that it is out of its turn, that the chief river of England should not have been surveyed up to the present time on the 25-inch scale.

2715. Would your view be that the Inclosure Commissioners should send out inspectors all over England, and, first of all, survey all the districts, and then apply to Parliament for the necessary orders for setting up these various Boards?

I think that, in the first instance, the way would be to select the rivers which really need some such dealing with as the Thames does. I would not send a roving commission to go into the matter of every little river, in the same way as has been done in the case of the Irish drainage.

2716. When you say that you would ascertain first what rivers ought to be dealt with, how would you do it?

I imagine that it would be from the information generally possessed as to the works of public rivers; it would not be very difficult for anyone who knew what the condition of all rivers was, to give that information; it would apply to those that have navigation, for instance, and that have important interests at stake in other ways; those that have ports at their mouths, and so on. You might pick out a certain number of rivers in the first instance as rivers to be dealt with in this way.

2717. When you say they should be picked out, would that be by the Inclosure Commissioners?

It would be done by the Inclosure Commissioners.

2718. You would leave it to the Inclosure Commissioners to say what rivers require to be dealt with?

Yes; the Inclosure Commissioners being strengthened in such a way as the Government thought fit.

2719. That would be, I suppose, by the appointment of more Commissioners?

Perhaps more Commissioners, and some further assistance in the way of engineering.

2720. Would you give to them the power of dealing with all these rivers; supposing the Inclosure Commissioners decided that a certain number of rivers required to be legislated for, and that boards should be set up upon them, would you give the localities any right of saying that they do not want to be treated in that way?

I see no objection to the inspector visiting the district, and giving notice that it was proposed to deal with the district in such and such a way, and to hear any objections to it.

2721. I understand that, according to your view, the Inclosure Commissioners should take the initiative altogether?

Yes.

2722. They might start by saying what rivers they require to be dealt with?

Yes; taking all the most important rivers first, those that have the most pressing need.

2723. How would they ascertain which had the most pressing need?

I think the complaints from the different rivers would probably indicate that with reference to floods and so on. Nottingham and one or two other places have

have made very great complaints of the state of their rivers, and I think that there are other rivers as well, where the towns and the people in the valleys have made complaints, and those are the rivers that I would go to first.

2724. Duke of *Northumberland.*] Then the application in the first instance would not come from any private individual, or bodies of individuals, but would proceed from the Inclosure Commissioners themselves?

Yes, in certain cases; I would not apply this to every little river in England. I think for certain purposes, improved permissive drainage power would be quite enough.

2725. I suppose your Act has not been long enough in operation to enable you to ascertain whether the different district Boards may not have conflicting interests?

I see no reason to think that there will be any difficulty between the district Boards at present; as far as the matter has gone already they seem to be working quite harmoniously together; one or two have already got schemes on the upper tributaries for drainage, for instance, No. 1 District, at Cirencester, and in that direction.

2726. Supposing that a dispute were to arise between the districts, to whom would that dispute be referred for decision?

To the central Board of Commissioners.

2727. Do you think that in that way harmonious action could be secured throughout the district?

I quite think so.

2728. Lord *Somerton.*] To go back for a moment to your former evidence, do not you apprehend that this compulsory power of buying of mills and of removing them, will bring you into direct collision, by-and-bye, with the Conservancy Board on the subject of navigation?

I quite expect that it will, and the Commissioners have put a proposal before another Committee, asking that the Thames Valley Drainage Commissioners should be the sole authority for navigation and drainage in their own district; they wished to get rid of the Conservancy from the district altogether.

2729. You are generally in favour, I understand, of one Board, and not of a divided authority?

Not of a divided authority over the same portion of the river, but that one authority should exist for all purposes over the same length of river; it does not follow that you may not divide a river up from point to point.

2730. Duke of *Northumberland.*] It would not prevent the bodies from clashing if you are not to have one central authority; one of these authorities may clash with the other at their point of junction?

As far as I can see, I think there is not much fear of that; but if there were any fear of clashing at the points of junction, I would put, as the Commissioners proposed, an appeal authority on any question of that kind; but I do not think that that is a real difficulty. I think it is more imaginary, because for a century or more there were two authorities on the Thames, the Conservancy or the City up to Staines, and the Thames Commissioners down to Staines. I never heard of any conflict between the two; as to navigation, the same points would arise with the canals where they have junctions with the rivers; but I never heard of any substantial difficulty between the river and the canal authorities.

2731. Do you think you are likely to come into collision with the other authority, because you run over the same length of river?

Yes, because we run over the same length of river; but if I could put them at one end and take them off the same length of river, I do not fear any collision; the collision occurs from their occupying the same ground that we do.

2732. Lord *Vernon.*] What does the staff connected with the Thames Valley Drainage Commission consist of?

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At present there is only the secretary; the engineer has not been appointed yet. Sir John Hawkshaw was being consulted at the time this Committee was appointed, and the matter was stopped in order to see what course the Committee would take as to the conservancy of the rivers.

2733. The district Boards employ their own staff of engineers, do they not?
The small district Boards would not employ an engineer; they would probably simply employ a surveyor; they would be only small internal works, not connected with arterial drainage.

2734. Have you any experience as to the effect railway embankments have upon that district?
No, I am afraid I have not; I can say very little upon the subject.

2735. Have they impeded the flow of water?
I have heard opinions expressed that they have, but I could not venture to say whether it is so or not.

2736. Lord *Penrhyn.*] I understood you to say that you thought the Inclosure Commissioners ought to take into their consideration the state of certain principal valleys and rivers in the kingdom, and then that they should at once begin and issue the necessary directions to have the rivers surveyed and mapped, with regard to future operations?
Yes.

2737. Then I understood you, at the same time, that there should be separate Boards for separate districts in those valleys?
If the course of the river is so long, and there were such conditions as made them think it would be better to divide it.

2738. Would not there be some danger of interference from a diversity of opinion as to the works to be carried out?
I think not necessarily; it is merely drainage; then their objects would not clash, and especially if you had an appeal authority, the danger is that the lower authority would be affected by the upper; if it was a mere question of drainage, I would put the appeal authority in the Inclosure Commissioners to regulate any little difficulty that arose between the two Boards; but as to navigation, I do not anticipate that there need be any difficulty, because the principles of navigation will be laid down; the height at which the water is to be kept would be laid down, from which they could not depart.

2739. What do you include in the word "drainage"; do you include works for the prevention of floods?
I include works for the prevention of floods as well as drainage.

2740. Surely in all valleys, as in a common drain in a field, you would begin at the lower end first?
I should.

2741. That would be desirable?
Yes.

2742. Ought not there to be some controlling power which should regulate the commencement of the Commissioners' works at the lower end of the valley, and prevent them from beginning at the top under a separate Board, and throwing a sudden increased influx of water down to the lower district?
That is where the regulating body would come in; they would make the lower people go on and would hold back the upper people till the lower people had improved their means of water discharge.

2743. Do you propose to give the Inclosure Commissioners power to enforce that upon the bodies representing the lower end of the valley?
I would give them the power. If you take the present case of the Thames Valley Drainage Act, the Commissioners of the upper 40 miles of this river have power to go on with the works at the present moment; nothing can stop them, unless it is that the people below get an injunction to restrain them from going on with their works, on the ground that they will injure them; then the effect of that would be that the whole of this upper district, by the sanction of Parliament,

ment, would have spent money and got power to go on with the works, and they would be restrained by a body below, who would not take the trouble to do anything to the lands below; therefore it would be fair to say that in certain instances the formation of boards should be compulsory, and they should be compelled to execute the works.

2744. Under the direction of the Inclosure Commissioners?
Under the direction of the Inclosure Commissioners.

2745. And that imperatively, without appeal to Parliament?
Yes; I see no reason why there should be an appeal to Parliament

2746. Earl *Stanhope.*] You say, do you not, that the improved drainage of high land is one of the causes producing floods?
I say that it is one of the causes.

2747. In that case do not you think that high lands that throw off the surface water into the valleys should be rated for the purpose of the improvement of the river beds?
That is a very difficult question; I have never seen my way to answering it in the affirmative.

2748. The high lands are not rated to your Board, but in any general proposal, should not the high lands be rated?
There is this to be said, that the high lands benefit the low lands on the hill side; it cuts both ways. Supposing a man has a stretch of land upon a hill, and he has manured it well, and there comes a heavy rain, it washes all the manure out through his drain pipes, and it is sent down into the valleys and enriches the pasture land; does not the pasture land get the benefit from his manure? In the valleys, I am bound to say, we do not care for the doing away with floods for land purposes; floods are very desirable if you can only get them when you want them, and not have them when you do not want them, and can pass them off quick enough.

2749. You would not think it desirable in time of harvest, would you, to have floods?
The object of all this legislation is, to regulate the floods if possible, and to pass them off instead of having them lie on the lands, and there would be the greatest opposition in the Thames Valley if the people thought that the floods on the grass lands were to be entirely stopped in winter; they are very valuable as long as the water can go on and off, and not be left lying on the land, and spoiling the grass; therefore I do not think it would be fair, and I cannot see any ground for taxing the people on the uplands, from which the water comes.

2750. I want to ask one other question about the local boards. In the case of removing weirs or making flood-gates, would you throw that duty on each local board; should each local board be obliged by the Inclosure Commissioners to remove weirs where they were obstructions, and to make flood-gates where they were necessary?
I would not leave that work to the district boards at all; I would treat that as part of the work of the central Board to deal with.

2751. Then do you think that there ought to be a central Board?
A central Board in a cluster of district boards; but the length of the river which is to be under their jurisdiction I leave to the Inclosure Commissioners; supposing the river is 80 miles long, it may be desirable to divide it half way; supposing it is only 50 miles, it may be desirable to make one board run over the 50 miles.

2752. You think, on the whole, that it would be desirable to have a central Board in addition to the local boards?
Yes, there should be a central Board; but it is very desirable that there should be these district boards for the small districts. The great objection to the plan under the English General Drainage Act is, that they are merely selfish schemes. A certain district of 1,000 or 2,000 acres says, "We want to embank or drain our land;" and they embank or drain it without reference to their neighbours, the effect of which may be to throw all the water upon the opposite ground, or to keep the water back on the lands above. The principle of the Thames Valley Drainage

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Act is to give the very desirable system of local self-government to these different districts, and yet to have one controlling authority among them to prevent them from damaging one another, and clashing with one another.

2753. Do you mean one central board in the whole kingdom, or a central board in each valley?

A central board in each valley.

2754. *Chairman.*] Will you state exactly your view as to this, so that there may be no mistake?

I state distinctly my view is, that, say it was a river 80 miles in length, it would be desirable to put 40 miles of it under one central Board of Commissioners, with district boards under it, and the other 40 miles also under a central Board of Commissioners, with district boards under it; any questions arising between the two central Boards of Commissioners would be dealt with by the Inclosure Commissioners in London.

2755. Earl *Cowper.*] You say that some rivers require Conservancy Boards, but some do not; do not you think that the inhabitants on the banks of a river would be the best judges as to whether the board is wanted, or not?

For that purpose I would suggest that the Inclosure Commissioners should send their inspector to inquire in the first instance, but I think that you very often find that though certain people object to have any board over them, still it is fairly necessary for the general good of all those on the river that there should be some central authority. Taking the question of the local government of towns, there was a time when certain towns only of a certain size had the power of adopting the Local Government Act, and no doubt some of the towns did not adopt the Local Government Act; but eventually the conclusion was come to that they must adopt some sort of public sanitary measure, and they were all brought into it. In the same way with rivers; in a case where it is for the public good of the whole that the river should be brought under control, it should not be left to individuals to say whether they will join it or not; the great difficulty which exists in the permissive legislation of the Drainage Act is, that you must get the consent of two-thirds of the owners of the land, and a great deal of work is thrown over from the difficulty in getting the consent.

2756. Are there not cases in which you could not get the consent of two-thirds of those interested, and yet it would be desirable to have a Board?

I think so.

2757. Do you know any instances in which that is the case?

I will not say that I know cases; I know that in the Irish Acts I was told that it was one of the great difficulties, and some very useful schemes were thrown over because they could not get the consent.

2758. And you think that that would happen in England, too?

Yes; not in the case where there are one or two large landed proprietors on a certain part, but directly you get among a number of little proprietors, you would have difficulty in getting them to do anything.

2759. I will ask you one question as to estimating the probable amount of benefit to be derived by those on the banks of the river; you said that it was very difficult to estimate the probable amount of benefit?

It would be very difficult to estimate it with absolute exactness.

2760. Could you tell how it could be arrived at at all; what they would take into consideration?

They would take into consideration the quality of the land and the position of it, with regard to water, and the effect that the drainage would have upon it.

2761. One of the principal things would be the height above the bed of the river, would it not?

Yes, that would be one thing; but there might be land within four feet of the flood line, which would be more benefited than lands within the floods, because it would get the damage of the river, and not get the benefit of it; the flooded land would get a certain amount of benefit from the floods passing over it, whereas the other would not get any benefit from the floods, and yet would have a certain amount of damage.

2762. Have you found, practically, that it is a very difficult thing to do; that it causes a great deal of discontent?

No, I did not say that that is my experience; what I said was this, that in the case that I have had of the Northmoor Drainage Act, there was no difficulty about it, but in the case of the Thames Valley Drainage, and I have no doubt it would be the same in any large scheme, there is a strong feeling of insecurity on the part of those who have to levy the rate caused by the possibility of this appeal, and therefore a feeling that there might be some difficulty in borrowing money. I do not know whether I might put in before the Committee a report which I made on the subject of the assessment to my own board, which deals with some of those very points. I believed that it would not work so badly as they anticipated, and I said, "I think that when once a scheme of improvements is formed, whether relating to a district or part of district, or to the whole river, the difficulties which seem to exist as to the ascertainment of the differential values of the probable improvement of lands included in the scheme, will solve themselves; since no scheme would be approved by the Commissioners which did not commend itself to them as likely to improve an extent of land and confer a benefit commensurate with the proposed outlay. The engineer propounding the scheme would have to state what extent of land would be affected by it, and in what manner, and his statement, when checked by the practical local knowledge of members of the Commission or district Boards, and such further information as they might think right to obtain from the owners or occupiers of lands, would guide them to a valuation which would not be likely to be widely or seriously contested, nor with much prospect of success." Still I am bound to say there is a feeling that there is a certain amount of insecurity in it, and that there are difficulties in dealing with these things. I may mention a case in point. There was a bridge that the Commissioners rebuilt at a place called Islip, and the question immediately arose, This being done as an isolated work, under particular conditions, how can we rate the lands for this particular work? How can we ascertain what lands have been benefited, and the proportion of benefit derived by the widening of the bridge which forms the outlet for the district? And the Commissioners felt the very greatest difficulty about it; so much so, that they came to the conclusion that it was a kind of work that they could not make differential assessment for, and that they would have to assess on an equal rate for it. There are very great difficulties in the assessment and in the working; and I think the difficulties will increase; it is not like taking a small drainage district all in one piece; and I think that the difficulties should be met to some extent.

2763. In estimating the probable benefit, would it not be a rough-and-ready method merely to take into consideration the height of each particular part of the land which would be affected above the bed of the river, and rate according to the height; the lower the land, the heavier the rate?

No, it would be impossible. You must deal with the quality of the land; one piece of land might be a light gravel, and the water would do it no harm; another might be a clay, and the water would damage it very much; the person making the valuation must take every acre, and see how it is likely to be improved or affected by the works done.

2764. Lord *Ker.*] In your evidence before, you said that you objected to any appeal to quarter sessions or petty sessions on the part of proprietors?

I would like to get rid of it.

2765. And you would object to the consent of two-thirds of the proprietors to any scheme which might be undertaken?

In certain instances; where the Inclosure Commissioners should come to the conclusion that it was necessary that there should be a scheme for the government of the river.

2766. The Inclosure Commissioners might naturally say that a scheme was necessary?

Yes.

2767. But whatever that scheme should be, surely it ought to have the consent, if they have no appeal, of the riparian proprietors, who have to pay for it?

The best security that you would have would be, that the board who are to

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do the works would be elected by the proprietors themselves, and they would not be likely to do anything not satisfactory to the proprietors. I would have nothing but a representative Board.

2768. That board would be a permanent Board; it would not be instituted to carry out any particular work, I suppose?

Yes, it would be permanent.

2769. The majority of the Board would decide upon what the character of the works were that were to be carried out, would they not?

Yes.

2770. But those proprietors who did not approve of the work would have no means of redress at all, would they?

No. I think that if you have a completely representative body, such as that of the Thames Valley Drainage Commissioners, there is no necessity to give private individuals a right of appeal against the decisions of that Board; if you once began that, you might do away with the Board altogether.

2771. Then with reference to the present Conservancy Boards; take, for instance, the Nene, on which there are an immense number of Conservancy Boards, you would do away with the Conservancy Boards, would you not, and leave the Inclosure Commissioners to redivide the river; putting each portion of the river under new boards?

I am not aware of the position of that river, but I should be inclined, if that is the case, to amalgamate them; if the Conservancy Boards are Boards which have been simply formed here and there, and spotted about, with conflicting powers, then, I think, that it would be desirable that the Inclosure Commissioners should reconstitute them.

2772. We have had it in evidence that river works carried out upon the upper part of the river have had no effect, in consequence of corresponding works in the lower part of the river not being carried into effect; in that case would you redistribute them?

Yes; and give effect to the drainage throughout.

2773. With regard to the Thames Drainage Act, are the subsidiary Boards quite independent of the arterial Board?

Quite independent, so long as they do not interfere with the arterial drainage. If they want to make a long cut they must lay the plan before the central Board before they can do it, and the central Board will say, "How will this affect, say, District, No. 3;" and they would ask District, No. 3, whether they saw any reason to object to it; and they would consult their own engineers, and if it would not interfere with No. 3 District, they would allow the other Board to go on with the work.

2774. Where does the jurisdiction of the arterial Board commence?

The district of the arterial Board runs practically over the whole; wherever the arterial rivers run they are the authorities, and the district Board must not do anything to the rivers without consulting the central Board.

2775. But in a general scheme, would not it be more desirable that the district Boards should be under the control, both as to rating and altogether, of the central Board of the portion of river to which they are attached?

No, there is no object in making them subject to the central Board for any other purpose than to protect them from each other, and prevent one from doing works that would hurt another; the less the central Board interferes with the district Boards the better.

2776. You think, do you not, that there is very little danger of clashing?

Yes, I think there is very little danger of clashing; it is the duty of the central Board practically to provide the arterial drainage for them, and to let them make their drainage into it.

2777. Is there any power of compensation in case of damage; the land might be damaged by the works of the Board by preventing irrigation; it might be necessary to prevent that?

It would be an interference in which the owner could claim compensation against the authority that did it, whether it was the district Board or the other; that

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that would be a case where they would claim it, and there are provisions in the Act for compensation for damage.

2778. Upon the whole, you think that the Thames drainage system is one that would be applicable generally, *mutatis mutandis*, to systems over the whole country?
I am sure that it would.

2779. Minus the power of appeal?
I should be glad to see the power of appeal gone, but I know that the secretary to the two upper Boards at Cirencester has an idea that the decision of the Commissioners should be final; that they are a representative body, elected by the ratepayers themselves, and his feeling is that what they do ought to be final, without any appeal to quarter sessions at all. I do not think that Parliament is in a condition to go that length, and therefore I suggest the course taken in the Irish Acts, that is, that the assessment should be settled by either the Inclosure Commissioners or some authority of that kind, and finally settled; and that then, having been finally settled by them, they being an independent body, it should be final.

2780. But minus again there the consent of two-thirds of the proprietors?
Yes, no consent of two-thirds of the proprietors; there is no consent under the existing drainage Act.

2781. In Ireland there is, is there not?
Under the present English Drainage Acts, when once the Board is constituted, that Board has power to do works without asking the landowners who are in the district whether they shall do them or not.

2782. But they have the power of appeal, have they not?
They have the power of appeal against the rates.

2783. In Ireland the consent of two-thirds of the proprietors is necessary, is it not?
Yes, to the first constitution of the district.

2784. In England those interested have the power of appeal against the rating, have they not?
Yes; I do not know whether I should put in the report which I made to the Duke of Marlborough upon the two systems, the English and the Irish system.

2785. *Chairman.*] You can put it in. (*The report is delivered in.*)

The Witness is directed to withdraw.

SIR JOHN HAWKSHAW, is called in; and Examined, as follows:

Sir *J. Hawkshaw.*

2786. *Chairman.*] I NEED hardly ask you whether you have had very great experience, both in this country and abroad, in all matters connected with engineering, and I think that you have special acquaintance with drainage works in Holland, where you have been engaged very largely?
Yes.

2787. And you have also had very great experience in drainage works in this country?
Yes, I have had a good deal of experience.

2788. I think that lately you have been engaged in making a report upon the River Witham?
I have.

2789. I do not know whether that report is public?
Yes, it has been delivered to the committee appointed to inquire into it.

2790. I do not want to examine you on the details of that report, because it applies chiefly to that particular river, but I want to get from you your experience with regard to the subject matter that has been referred to this

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Committee; namely, how would you treat the rivers in the country generally, with regard to floods and drainage?

I think that every river will have to be treated with reference to its own particular *régime*; I do not think it is possible to lay down methods dealing with all the rivers of this country, or of any country.

2791. Are you aware that some of the large rivers in this country have got no system of drainage at all?

Yes.

2792. And some have got a system that is somewhat faulty?

Yes, I think that in many cases our own system is faulty; and certainly not so efficient as the system which is pursued in Holland, arising, probably, from the consequences of flooding in that country being much more serious than they are here; but at the same time I think that every river has to be studied, and that you cannot devise any method of engineering works for dealing with rivers generally.

2793. Would it commend itself to you that the river should be placed under some local authority to manage the river itself, both with regard to navigation and also with regard to drainage?

That is an extensive question. I think that generally each river should, as regards drainage at all events, be placed under one authority; I mean a local authority, an authority elected or composed in some way which should be fair and proper for all the interests concerned, landowners and occupiers; each river would be better under some authority so constituted. There may be cases where it might not be convenient to restrict the whole river to only one such authority,

2794. Have you considered the proper mode of assessing the land in the neighbourhood of the river for the works that would be necessarily carried on by that Board, in connection with the river?

I have given a good deal of consideration to that question in the report which your Grace has just been referring to, with regard to the drainage of the River Witham; no rule can be laid down which will apply to every river, though to some extent perhaps the same rules might be applicable; in that particular case, and on that question, I had some trouble in coming to a conclusion, more so than on the engineering questions which were complex enough. I came to the conclusion that equitably what are called the uplands should bear some portion of the expense of improving the drainage. I do not say to the same extent as the lowlands, but it appears to me that there are cases, and the Witham is one, where the lands from which these waters are poured down on to the lower lands might equitably be called upon to bear a portion of the expense.

2795. Then you would, as I understand you, rate the district in proportion to the benefit that it received?

Yes, as nearly as is practicable; it is difficult, sometimes, to apportion the benefit with precision, and my proposition embraces to some extent those who occasion the floods, as well as those who suffer from them.

2796. Have you formed any conclusion as to what would be the best mode of arriving at those conclusions?

It is one of those things, like many others, that must come at last to individual opinion. I do not see any other mode of getting at it. I do not know any method of measuring it or weighing it precisely. I have not suggested in that report what proportion the highlands should pay towards the large and important works which are there recommended, because, I have not been asked to do it, and I did not go beyond my instructions; but I have pointed out in that report that, in my opinion, the highlands should bear some portion of the expense; it is the last paragraph on the 20th page.

2797. Perhaps you will read that, and give it as your opinion?

"It will be seen from the above remarks that I consider that improvements carried out in the drainage of the highlands, both by extension of sub-soil drainage and alterations in the watercourses, have increased the floods in the lower districts, and have made the main channels of drainage less capable of carrying off the flood waters, and I think that the owners of the highlands might be equitably called upon to bear a portion of the expense of improvements of the main channels which they in some measure have rendered necessary."

2798. I do

2798. I do not know whether you have considered how these boards should be originally set in motion; what course should be adopted, whether it should be by petition from a district to a central authority, or how?

My impression is that these boards will generally be set in motion by the necessities of each case; if landowners and tenants are suffering greatly from floods they will, I think, arrive at a conclusion quite soon enough that something is necessary to be done to ameliorate or to do away with the floods; as far as my experience goes, that has generally been a sufficient motive, and I do not see any other way in which it can be dealt with; no body sitting in London could very well say with regard to the rivers of this country and Scotland, to gentlemen who have lands in those valleys, that they were neglecting their duties, and should set about preventing floods. If the gentlemen whose lands are suffering do not feel the necessity for it, I should leave them until they did feel a necessity for it; I do not see any other method of dealing with it; adopting any other course would be taking the thing out of the hands of those interested, and placing it in the hands of those not interested, and who might know nothing about it beyond what they knew from hearsay.

2799. And these boards set up by the necessity of the case, which you think would arise quite soon enough, would, according to your suggestion, have power to deal with those matters that were objectionable, and would have power to rate the district in the manner you have described, and in the manner you have recommended in the report on the River Witham?

Yes, or if they had not the power, and in some cases they would not have the requisite power, then it would be their duty to apply to Parliament to give them that power; but I do not see much use in getting Acts of Parliament to constitute bodies to do something, which something they have never ascertained; the first course is, having an object, to ascertain what works would be necessary and proper to carry out that object; then to find out the cost of the works, and having got that before them, to consider whether they would be willing to incur the cost, and then to seek from Parliament the requisite power.

2800. Your attention has been, I think, drawn, in your various engagements throughout the country, to the pollution of rivers?

Yes, it has. I was appointed Royal Commissioner in 1874 to deal with the pollution of the River Clyde and its tributaries.

2801. Do you think that any of the duties which are connected with the prevention of the pollution of rivers, might be improved with great advantage upon these boards if they existed?

Probably, in some cases; but I do not think there can be any rule laid down, because, in some cases, like the Witham, there is no pollution that I am aware of; therefore, there it would be unnecessary; but there might be cases where you might combine the two duties with advantage.

2802. Therefore, in point of fact, your view, having studied the subject, and having had great experience, is, that you cannot lay down a general rule to deal with these rivers, but that the necessities of each river must be dealt with separately?

I think so.

2803. And what might be a very good rule to apply to one river, might be a very bad rule to apply to another?

Yes, it might be inapplicable.

2804. You have had a good deal to do with railways in this country, have you not?

Yes.

2805. Have you any opinion as to what has been suggested, namely, that the railway embankments have anything to do with the floods of the country?

I should not say so, generally, but there may be cases where a valley may have been confined by a railway embankment, which may render the floods larger.

2806. You do not recollect any of your own embankments having flooded districts?

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No, I do not recollect any at present; the question continually arises before Railway Committees. When railway companies propose to cross rivers or pass alongside of them, the parties interested in them appear and require a certain amount of waterway to be provided for navigation or drainage, as the case may be; and if anything wrong takes place in those cases, it must be from the neglect of the parties who are interested in looking after them. Railway Committees, generally, compel railway companies to do what they think just and proper, and what is proper they judge of by hearing the parties.

2807. Then, as a general rule, you would say that railway embankments have no appreciable effect in causing floods generally?

There may be special cases where mischief may have been done; in fact, I have been told lately that such cases arise at Burton, which I visited the other day, at the request of the people of that town, which is very much flooded; they allege that the Midland Railway obstructs the river.

2808. Lord *Penrhyn.*] Is it not more or less easy of test by observation in times of floods, by the submergence of the ground above and below the embankment; is not that the test as to whether the embankment has acted as a dam; if the ground above is to a great extent flooded, and the ground immediately below the embankment is not flooded, that would be a criterion of the degree to which the embankment had blocked up the water?

Yes; if a case is pointed out where it is alleged that a certain railway embankment obstructs the flow of flood-water, there cannot be any difficulty in ascertaining it.

2809. *Chairman.*] But I understand you that the general run of opinion is that that is not the case, though there may be isolated cases in which it has happened?

Yes, I just remembered the case at Burton, but I do not think it applies very largely.

2810. The Duke of *Northumberland.*] You said that in your opinion it would be fair to charge the upland districts with part of the expense of the improvement of the drainage of the lower lands, by reason of their sending down more water in consequence of the drainage?

Yes, I have said so.

2811. There have been witnesses examined before us who have maintained that the system of drainage did not contribute to bring down the water more rapidly or in a greater degree than was the case before the drainage was made?

My general answer to that is, that they are mistaken; the opinion I gave as to the Witham arose upon that special case, but speaking generally, whenever you straighten brooks, and cut off their bends, and widen and straighten watercourses, and also when you carry out subsoil drainage extensively, those operations must cause the water to flow with greater rapidity from the land into the river to which it is carried, and though it may not increase the quantity, yet if you bring down the same quantity in one day instead of two days, it doubles the volume, and therefore would be more likely to create floods. I have no doubt there are many works of that sort which increase the magnitude of floods; perhaps insensibly, but over a long period of time there is no doubt they do increase them.

2812. In the case of an extended range of country through which the river passes, a great number of different interests generally arise; if the inhabitants of one part of the river desire improvements and the creation of a board, they might be opposed by the inhabitants of another part, I suppose?

No doubt that often happens; therefore I think the preliminary step in these cases should be to define by plans the works that are proposed to be carried out, and submit those to the consideration of the parties interested in them, or who would be affected by them, and then seek from Parliament authority to do them. Of course in the case of parties who object to the works, they would have a right to appear before Committees of Parliament and state their objections, and if the Committees thought their objections were valid, they would consider them, and do what was proper.

2813. Then

2813. Then in such a case you would force the inhabitants of the district to go through the tedious and expensive process of a Committee in the Houses of Parliament?

I would not do it if I could see any cheaper or shorter method, but at present I do not.

2814. It has been suggested that application might be made for the creation of a local Board of Conservancy which might settle these conflicting interests with the inhabitants?

Yes, but I do not see how a local board could settle anything until they settle what it is they are going to do. Supposing you constituted a local board, until the board defined the works which they wished to carry out, I do not see how they could know what they were going to do; you could not say to a local board, Do what you please; then if they are not to do what they please, who is to define what they may do? At present I do not see any other authority to decide these matters but Parliament; if you left it to a Government Department, to the Inclosure Commissioners, or the Board of Trade to perform such duty, I think the work would not be done; I think that no Government would undertake it, if they did, I think they would not get it done.

2815. Then we are thrown back upon the present system of applying to Parliament for the performance of local works?

I do not see any better method.

2816. *Chairman.*] Would you call in aid the system of Provisional Orders?

A Provisional Order may do for small things; I am speaking of works amounting to large sums; I think no landowner would like to be told by Provisional Order that he was to help to find 600,000 *l.*

2817. Lord *Penrhyn.*] Would not it amount to the same thing if he has power to appeal to Parliament?

Then it comes to Parliament eventually.

2818. If it remains for a certain period after the notices are given without opposition, it passes into law; whereas, if it is appealed against, there is a power of going before Parliament?

I cannot see that that would reduce the expense; it appears to me that, instead of reducing it, in all probability it would increase it; even then who ever has to grant the Provisional Order must obtain information.

2819. *Chairman.*] The Provisional Order I am alluding to is the ordinary Parliamentary Provisional Order, by which a Bill is brought in, read a second time, then lies upon the table for so many days if it is not objected to, and, if it is objected to, it goes through a regular Committee?

It is seldom a Bill for works of magnitude passes without being objected to. Take the case of the Witham; the Witham is 60 miles in length, and its tributaries are 30 miles, involving a large number of landowners and tenants. You must make plans and sections, and you must make estimates; to do that, you must employ some one who has sufficient skill to perform the work; then it must be considered by the various interests; and if you then applied for a Provisional Order, and if it did so happen that nobody objected to it, it would be a simple process. But so are unopposed Private Bills.

2820. The Duke of *Northumberland.*] Half a dozen different schemes have been originated from time to time upon the banks of this river, and they are found to be antagonistic to each other; injuring each other, they have all received the sanction of Parliament; they have all received the sanction of the inhabitants, but in consequence of the altered state of things in the river, and the altered state of the knowledge of the laws which govern the river, they cannot be put into operation; what remedy is there in the system which you advocate?

I do not at present know of any remedy except you can find wiser human beings to settle these questions; they partly depend upon the fallibility of human judgment; you are liable to that, even if you apply to a Government Department; it must come to a matter of opinion and judgment at last. This particular question is a very old question; ever since I have had to do with Committees of Parliament for more than 30 years, it has been constantly under consideration

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consideration, whether or no some method could not be found of doing away with the present expensive process of obtaining Private Bills; it has been considered times without number, and it has always led to the same result.

2821. You have heard the evidence of the last witness?
Yes.

2822. Do you think that the system adopted in the Thames Valley Drainage Bill is objectionable in itself?
I know something about that matter, because I was applied to by the Commissioners to advise them this year, and it was the appointment of this Committee which stopped their progress; they have got the Act, but they have not decided on any works, and they were consulting me with the object of beginning where I say you must begin; they were going to ask me to devise for them works which should do away with or ameliorate the floods in the Thames; that would lead to the same kind of inquiry that I have been engaged upon in the Witham; when those works are devised, and the cost ascertained, I do not know whether they could do without the sanction of Parliament; at present they have a Bill which constitutes the body. I do not to say it was not a proper thing to do; they are a constituted body who have now to commence their work; what they have done is to make a survey, which, if an Ordnance Survey of the district had been finished, they would not have had to do. From what I have heard of the machinery of the Bill, I should say there would be trouble with the appeal about the rates. Works have been carried out in the Fens under my advice, where Acts of Parliament have had to be obtained; in those Acts the rates are defined; the landowners know what they have to pay, and the tenants know what they have to pay, so that you have no further uncertainty; but if you have appeals to the courts of law about rates, the legal expenses may be serious.

2823. Then your anticipation is that this scheme of the Thames drainage will prove a failure?
No, I do not say that. Had they consulted me when they obtained the Bills, I should probably have advised them to do what they will have to do now, namely, define the works which are to be carried out to ameliorate the floods. I should advise them to do that now; then they would know what the cost would be; they would know what sort of burden they would have to put upon the parties who have to find the money, and they would be in a position to go on with the work.

2824. As I understand by that scheme, it is left to each district to do what it pleases for relief from floods, providing always their action does not injure the district adjoining?
No, each district cannot do what it pleases. Supposing a district wants to do something, they have to get the consent of the Thames Conservators; if they do not get their consent, they have to go to the Board of Trade; so that in reality they have not power to go on with such works as they please, nor, indeed, with any works that I am aware of, until they have undergone those processes.

2825. If the works are not objected to, as I understand, by the district, the district can proceed?
Yes.

2826. Subject always to the approval of the central committee, which is to decide whether the works to be executed are injurious or not to their neighbours?
Yes, but with the exception of works which can be done by consent, if they come to large important works, affecting the Thames itself, and affecting that which is under the jurisdiction of the Thames Conservators, then difficulty may arise.

2827. Can you point out any method of a simultaneous and harmonious action which can go throughout the area of the watershed of a whole district, unless there is a central committee?
No. In this report your Lordship will see I have advised; with regard to the River Witham, there should be a jurisdiction over the whole of it, and I think that is necessary. In places in Lincolnshire, to which this report applies, at present there is a great variety of jurisdictions, which I think work badly; for instance,

you

you will have gentlemen in one district doing something which they think is a benefit to the drainage, and some one else may be doing something inimical to it; therefore I think a central, but not a Government, jurisdiction is essential, and in this report I draw attention to that.

2828. Then I understand that you are not opposed to a central body, to whom all matters relating to a river shall be referred?

Quite the contrary. I will, with your Lordships' permission, read these words from my report on the Witham: "For several years I have been connected with works in Holland, including, incidentally, drainage works on a large scale. The supervision of those works in that country, on the safety of which so much depends, is, as might be expected, much better than in England. Many of our defects arise from the great variety of jurisdictions. The internal drainage works are often under one control, and the main drainage works under another, and some works appear to be under no definite control whatever. An instance of the latter kind seems to exist adjoining the Trent at Torksey, where last winter an embankment was nearly breached, and still remains in a very dangerous state. The waters of the Trent last January rose four feet higher than those in the Foss Dyke, and a breach in that embankment would have flooded Lincoln and the lands drained by the Witham to a still more serious extent than they were flooded. In cases in the district now under review, and in others, the safety of valuable property has been a question of a few inches, and has often depended upon a few shovelfuls of clay hastily thrown up, or what is called cradging, and which may or may not be effected in time. This might be remedied if every drain, main, or subsidiary on which the safety of the lands in the district depended were put under one control, and the body vested with that control were armed with powers to levy funds, not only for the construction of the works, but also for their repairs and maintenance."

2829. Do you refer to that body in your report upon the question of the navigation of the river?

Yes; I recommend that the River Witham, which is an important one, should be placed under one jurisdiction, and not under a number of jurisdictions; but all I was saying was that a mere Act, appointing Commissioners, would not help much, where important works are necessary; that body must be appointed, and must have authority from somebody, to do the works and raise the money. At present I do not see how that is to be done otherwise than by Parliament.

2830. Lord *Vernon.*] To illustrate what I believe to be the scope of your evidence, I will refer to the town of Burton, upon which you are advising the Commissioners as regards the protection against floods; I suppose you are able to advise them what measures to take which will protect them from flood; is not it possible that in carrying out those works you may be doing serious injury to the land below, and still more to the town of Nottingham, than at present exists?

As the works are not yet settled, it is rather difficult to answer the question; but I have been to Burton, and I have examined the circumstances of the case, and I think that what I shall advise them to do will not damage anyone below.

2831. I do not ask what you propose to do at Burton at all, but supposing any other engineer was to be called in, it would be possible for him to advise that such steps should be taken as would materially affect the district below?

Yes, that is possible.

2832. Is not that therefore an argument in favour of having one central authority to deal with the whole engineering works of the watershed?

No doubt, *pro tanto*, it is; and in this particular case of the Witham, I advise that; Burton I look upon as a minor case; it is simply something that is wanted to prevent the water finding its way into the town.

2833. Great injury was done by floods at Burton, as we all know?

Yes; but at the same time it is possible that what I may advise will not damage Nottingham.

2834. The town of Nottingham might be able to protect itself, but a poor riparian owner might not be able to carry out works at his own expense, and the

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whole of the district might be affected with flood, through his inability to carry out the works?

Yes, that is possible; but that appears to me to be a reason why you should call upon the parties to define the works which they are going to do, and put them upon a plan, so that everybody can understand what is to be done; and if that is submitted to Parliament, anybody who thought the works inimical to them could appear and object to them.

2835. When you speak of parties, you mean parties all down the river; you would have a comprehensive plan submitted to Parliament?

I think it is necessary upon important rivers, that whatever works are proposed to be done should be defined, so that nobody shall be in the dark about them.

2836. Taking the same illustration, do you mean that the town of Burton should define its plan, and the town of Nottingham should define its separate plan, or that the two should form part of one plan?

That would be a matter for the parties; but if the town of Nottingham wanted to do works in the river, they should furnish plans of the works, and so should every other town.

2837. Then it would not be a comprehensive plan?

Then it might be rejected if Parliament thought fit. The method of proceeding without plans is going back a hundred years. I have an old Act with regard to this River Witham, in the time of Charles the Second; it is a very short Act, and very clear, and I dare say it was not expensive; it is only five or six pages, but this Act enumerates certain noblemen and gentlemen; it gives them power to do what they please, and to rate the district. You cannot do that now.

2838. Duke of *Northumberland.*] I believe it was effectual at the time?

I have no doubt it was; and useful works were probably done upon that river under that Act of Parliament; and probably then it might be a very proper Act, but now the interests are larger.

2839. Then they were done by Dutch engineers?

They were, in some cases.

2840. Lord *Penrhyn.*] Then you think that all the works for the purpose of preventing floods in the different valleys ought to be separate arrangements by Parliamentary Bills?

I think so, because I do not see any other way of doing it.

2841. And you think the origin of the scheme ought to be left to the local parties interested in the valleys?

Yes.

2842. And that there should be no public board to enforce the carrying out of certain schemes?

I do not see how it is to be done.

2843. You would leave it entirely to local efforts?

I would.

2844. Might not there be a considerable divergence of interests between the country districts and the towns flooded?

No doubt.

2845. Where would you give the power of moving and deciding upon that point; take your own case in that report, I think you speak of making a cut outside the town of Lincoln to save the town of Lincoln from being flooded?

I do.

2846. How would you have Lincoln represented in laying the case before Parliament; if damage is principally sustained by the town of Lincoln, what remedy would you give them as against the interest of the landed proprietors of the neighbourhood?

I think it would work probably in this way: Assume that there is mischief

chief to be remedied in this valley through which the Witham passes; the landowners did me the honour of calling upon me to advise what should be done to prevent it; they have got my views, and they have got the probable expenditure; it is possible there may be enough of unanimity in these gentlemen to induce them to apply to Parliament.

2847. When you speak of these gentlemen, whom do you mean?
The committee to whom I made this report.

2848. A committee of whom?
Several noblemen and gentlemen; large landowners, including the mayor of Lincoln.

2849. Is Lincoln represented upon that committee?
Yes, Lincoln is represented; and many large landowners are represented, but it is possible that some may decline to make us go on with it; then those parties who think that there was necessity for proceeding, might themselves come to Parliament and ask Parliament to remedy the evil, and in their Bill they may propose to tax even the parties who declined to go on with it.

2850. But you do not think it is politic to give any appeal to any Government office, such as the Inclosure Commissioners, to decide whether that is a thing that ought to be proceeded with or not?
I do not see how it is possible.

2851. But could not they give their opinion as to whether it should be proceeded with or not?
In that case it would be of little use unless that opinion was to over-ride the opinion of a Parliamentary Committee; supposing that some of the Committee who called for my report assented to it, and that some dissented from it, and suppose that the parties who assented went to the Inclosure Commissioners, and they were to say, "We think the thing ought to be proceeded with," still you have to come before a Committee of Parliament.

2852. Your opinion is that things should be left as they are now as to any remedy for these floods, and that it should be in the hands of the parties to apply to Parliament for a Bill to carry out their views; is that so?
Yes, that is the only thing that occurs to me as practicable; I do not see what could be done that would be better.

2853. Earl *Stanhope*.] May I ask who is the controlling authority in Holland?
The district I have had to do with, which is called Rheinland, through which I have been making a ship canal, contains upwards of 300,000 acres, and is under a body, who have control over it, and take care of the works and keep them in repair, just as would be the case if what I recommend were carried out as to the River Witham; the only difference is that our mode of management is more lax than it is there; what is called the Fens are often divided into small compartments, each compartment with its own superintendents. I have seen cases where the farmers have carted away a bank, when they wanted soil; the consequence of which was, that before long the floods rose higher than was expected, and their land and some of their neighbours' lands were flooded. The Middle Level district, for which I act, suffers sometimes from this; on a late occasion when I was there I had to stop parties who were carting away one of the embankments; if that happened in Holland, the person who did it would be sent to prison.

2854. Duke of *Northumberland*.] Is that the municipal authority there?
No, they are equivalent to Commissioners who look after special districts, and have authority to levy rates to maintain the banks; in point of fact, they have absolute control over everything upon which safety depends.

2855. Earl *Stanhope*.] Who names the body, and what power of rating have they?
They are named in the way they are here, by parties interested in the lands, under statutes authorised by the State; there are some things there which require the sign manual of the King himself. They have a special engineering staff called Engineers of the Water Stadt, who look after the embankments, and the superintendence is very rigid.

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2856. Are they a department of the Government, such as the Inclosure Commissioners in England?
No; the gentlemen looking after the district of Rheinland are much the same as the Commissioners of the River Witham, but with more power; but, as I have already stated, there is a Government department of engineers called Engineers of the Water Stadt. Those engineers are under the control of the Government, and nothing can be done of great importance without the sanction of those gentlemen.

2857. Have they the control of the rivers?
Yes, they have the control of every embankment on which the safety of the country depends.

2858. Have they also the control of railways?
No, the railways are under a separate department. In Holland there are some railways which have been made by the State, but there are also railways which have been made by companies.

2859. Then the engineer department which exists in Holland is not an equivalent for our Board of Trade?
No, it is more like the engineers of the Ponts et Chaussées in France. They have a school of engineers, and the engineers have to pass a certain examination; they are called the Engineers of the Water Stadt, and they correspond in some respects with the engineers of the Ponts et Chaussées in France, but they have also engineers who are not under that particular department.

2860. Duke of *Northumberland.*] Is the work upon which you are engaged a Government work?
Yes, in this sense, that they guarantee the interest upon the cost of it. There is a company, but the Government guarantees 4 per cent. upon the cost.

2861. Then is the work undertaken under Government superintendence?
Not exactly; I am the consulting engineer, and the Government have no control over me.

2862. But they have superintendence over the whole scheme, have they not?
The Government, inasmuch as they guarantee the interest upon the expenditure, have a control analogous to that of the Government in India. I am one of the consulting engineers to the Indian railways, and any plans which I send to India have to get the sanction of the Government engineers, who are Royal Engineers.

2863. Earl *Stanhope.*] That is not a local rate, but it is State assistance, is it not?
Yes, and so it is in the case of this canal. We have State assistance, because they guarantee the interest, therefore are under a certain amount of control.

2864. I want to ask one question as to the central authority; do you think it would be an advantage if the Inclosure Commissioners in England were placed in the same position as the Board of Works is in Ireland, as to the power of over-looking rivers and floods?
Of course you might constitute a body large enough to do it, but the present Inclosure Commissioners could not do it; then you get back to the question of the State undertaking the control of works. I do not think that it would be a good thing for this country.

2865. In Holland, besides the canal, they have the State assisting in embanking the rivers, have they not?
Yes, the state are liberal in respect of public works; there are certain railways which are not likely to pay, and no private capital could be obtained for their construction, and the State have undertaken those railways. There are some things which people in this country press the Government to do. As to how far that would be of advantage, the Government must be the judge.

2866. On the whole, do you think that a central authority, with local authorities, under some such system as you have seen working in Holland, would be of advantage in controlling floods in this country?
I think central authorities for special districts would be of advantage.

2867. Lord *Ker.*] Did I understand you to say that if any portion of the river required works to be executed in it, that particular portion of the river should get an Act of Parliament for the purpose of doing them?

I think that works of importance should not be permitted unless they have the authority of Parliament.

2868. Would not that lead to a great many Acts upon some portions of rivers?

There are a dozen authorities in the particular portion of the river that I am dealing with. I point out the evil of that, and say that so great a number of jurisdictions is a bad thing.

2869. In the River Witham there appears to have been somebody to start the alteration; but might not there be in some cases nobody to start it; the different Boards, each having a local Act, might be jealous of one another, and nothing would be done?

If the case is not so urgent or so mischievous to the parties interested, as to make them act, I would leave it until they do act.

2870. Might not the interests of one body be different from the interests of others?

Yes, but it is possible for parties who feel the severity of these floods to come to Parliament and say, we are suffering from these floods; some of our neighbours do not join with us, but we ask for power to make works to get rid of the floods, and we ask you to tax those who reasonably ought to be taxed. You need not wait before you come to Parliament until everybody has agreed; if you did you would never get anything before Parliament.

2871. In order to make the works efficacious, they might want power to force people on the other part of the river to carry out the works?

That can be done in the Bill. In what I recommend for the Witham, it is possible that I have advised some works which parties living upon a particular river or its tributaries may object to; but I should go to Parliament notwithstanding; it would not prevent you from asking Parliament to enforce the works.

2872. Even if the parties have local Acts of their own already?

Yes.

2873. Lord *Stewart of Garlies.*] What proportion of owners should agree in order to entitle you to compel others?

That is a question of which the Committee would judge; the Committee will have to judge of the urgency of the works proposed, and of the reasonableness or unreasonableness of compelling them to be done; you could not lay down a rule as to that. A committee of Parliament would not be likely to enforce works which appeared to them unreasonable or unnecessary; but if they thought them reasonable and necessary, then Parliament would not hesitate to enforce them, even though there might be parties objecting to them.

2874. They would receive petitions, and then arbitrate?

Yes; that is done in most public works; there is generally somebody opposing and objecting to the works.

2875. *Chairman.*] I understand you to say that you think it advisable that in each river there should be a Board of Conservancy?

Yes, or Commissioners.

2876. And that in any great works, such as you have recommended in the River Witham, they should apply to Parliament for power to construct those works, and for raising the money to deal with the expense that would arise out of the works?

Yes.

2877. And that being once constituted the Commissioners or Conservancy Board of that river, they would continue so; but that there might be cases in

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which it would not be necessary for them to apply to Parliament for any extra powers, such as dredging the river, or seeing that the outfalls and drains coming into the river were kept in proper order; and that you would not contemplate in those smaller affairs that they would require to go specially to Parliament?

There may be some such cases.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned *sine die.*

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LIST of General Statutes relating to Commissioners of Sewers now in force.

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13 Eliz. c. 9.
7 Anne, c. 33.
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12 & 13 Vict. c. 50.
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Land Drainage Act, 1861.

Cases in which Commissioners of Sewers were recommended to Home Office under Part 1 of the Act.

Name of Place.	County.	Area.
		Acres.
Llangorse	Brecon	1,085
Clist Valley	Devon	1,327
Ladden Brook	Gloucester	950
Walmore	ditto	761
Staunton Common	Hereford	1,454
Worm Brook	ditto	2,100
Chet Valley	Norfolk	847
Muckfleet	ditto	1,373
Martham	ditto	600
Winterton and Somerton	ditto	1,055
Idle River	Nottingham	6,000
King's Sedgmoor	Somerset	11,259
		28,811

Land Drainage Act, 1861.

Separate Drainage Districts for which Provisional Orders were issued and Acts of Parliament passed under Part 2 of the Act.

Name of Place.	County.	Area.
		Acres.
Frodsham and Ince	Chester	4,217
Mordon Carrs	Durham	2,578
Lay	Gloucester	246
Deeping Fen	Lincoln	460
Digby	ditto	1,440
Bourn (South Fen)	ditto	880
Dysynny Valley	Merioneth	2,564
Hadiscoe	Norfolk	1,628
Wissey	ditto	8,240
Maxey	Northampton	7,918
Northmoor and Stanton Harcourt	Oxford	2,038
Chedzoy	Somerset	2,412
Curry Moor	ditto	1,820
Aller Moor	ditto	2,155
North Moor	ditto	3,234
Stanmoor	ditto	676
Longdon and Eldersfield	Worcester and Gloucester.	3,595
		46,101

Appendix A.

COMMISSIONERS of SEWERS now in force issued pursuant to an Act, 23 Hen, 8, c. 5.

Kent - - - -	Denge Marsh and Southbrooks. Gravesend Bridge to Sheerness and Penshurst. Mersham, Ashford, and Chart. Teynham, Tonge, and Luddenham. Walland Marsh.
Herts and Sussex -	Level of Guldeford.
Sussex - - -	Bramber. Rape of Arundel. Pevensey and Hastings. Lewes and Laughton Levels. Western parts.
Essex - - - -	Havering and Dagenham. Rainham Bridge and Mucking Mills. Fobbing, Corringham, Stamford-le-Hope. Burnham, Southminster, and Dengy. Tendring Hundreds. Foulness Island.
Norfolk - - -	Fenlands in the county of Norfolk. Hundred of Bloefield, Clavering, and North Espingham.
Suffolk - - -	Sudborne. Iken. Fulkenham, Felixstow, Walton, Frimley, St. Martin, &c. Blything, Mutford, &c.
Isle of Ely - - -	Wisbech.
Nottingham, &c. - -	Certain limits in the counties of Nottingham, Lincoln, Yorkshire, Derbyshire, and Leicestershire.
Somersetshire - -	Certain limits in the County of Somerset.
Monmouthshire - -	Caldecott Level.
Yorkshire - - -	Certain limits in the eastern part of the East Riding.
Gloucestershire - -	Henbury.
Isle of Wight - -	Sandown Levels.
Lincolshire, &c. - -	Certain limits in Lincolnshire and Nottinghamshire.

Appendix B.

PAPER handed in by Mr. *Grantham.*

LAND DRAINAGE ACT, 1861.

Particulars of Applications under the Act.

Year.	Name of District.	County.	Whether District Board or Commission of Sewers.	Extent.	Area of Watershed.	Remarks as to Works.
				Acres.	*Acres.*	
1862	Morden Carrs	Durham	District Board	4,000	–	Completed.
	Wormbrook	Hereford	Commission of Sewers	1,977	12,428	- ditto.
	Wissey	Norfolk	District Board	8,240	–	Partly done.
	Ladden Brook	Gloucester	Commission of Sewers	957	8,960	Completed.
	Longdon and Eldersfield.	Worcester	District Board	3,595	17,000	Nearly completed.
	Llangorse	Brecon	Commission of Sewers	1,085	7,948	Completed.
	Maxey	Northampton	District Board	7,918	21,417	Not known.
1863	Martham	Norfolk	Commission of Sewers	591	2,707	Powers only.
	River Idle	Nottingham	- - ditto	6,000	–	Partly done.
	Stanmoor	Somerset	District Board	676	1,318	Engines erected.
	Currymoor	- ditto	- - ditto	1,820	5,086	- ditto.
	Dysynny	Merioneth	- - ditto	2,564	40,960	Completed.
	Staunton Common	Hereford	Commission of Sewers	1,454	7,844	- ditto.
1864	Winterton	Norfolk	- - ditto	1,055	2,500	- ditto.
	Chedzoy	Somerset	District Board	2,412	4,348	Engine erected.
	Kings Sedgmore	- ditto	Commission of Sewers	11,259	51,200	Little done.
1865	Frodsham	Chester	District Board	4,217	11,259	Nothing done.
1866	Northmoor	Oxford	- - ditto	2,364	3,560	Completed.
1867	Northmoor	Somerset	- - ditto	3,235	11,102	- ditto.
	Aller Moor	- ditto	- - ditto	2,155	3,338	- ditto.
1868	Haddiscoe	Norfolk	- - ditto	1,628	4,990	- ditto.
	Muckfleet	- ditto	Commission of Sewers	1,404	10,176	Nothing done.
1869	Westmoor	Somerset	District Board	1,574	–	Not approved.
1870	Digby	Lincoln	- - ditto	1,440	–	Completed.
	Bourne South Fen	- ditto	- - ditto	880	–	- ditto.
	Clist Valley	Devon	Commission of Sewers	1,327	–	Nothing done.
	Chet Valley	Norfolk	- - d tto	847	–	Completed.
1872	Deeping Fen	Lincoln	District Board	460	–	Not known.
1873	Walmore Common	Gloucester	Commission of Sewers	about 700	about 1,450	Unfinished.
1874	Lay	- ditto	District Board	393	–	- ditto

RIVERS OF ENGLAND AND WALES.

First Class Rivers, having Catchment Basins of 1,000 Square Miles and upwards.

Name.	County.	Length.	Area of Basin.	Tributaries.		Remarks.
				No.	United Length.	
		Miles.	*Sq. Ms.*		*Miles.*	
Humber	York	37	1,229	2	55	
Mersey	Lancaster	68	1,707	6	188	
Nene	Northampton	99	1,055	1	11	
Ouse	York	59½	4,207	11	629	
Ouse	Cambridge	156¼	2,894	8	212	Bedfordshire.
Severn	Gloucester	178	4,437	17	450	
Thames	-	201¼	5,162	15	463	
Trent	Lincoln	167½	3,543	10	293	
Tyne	Northumberland	35	1,053	6	154	
Witham	Lincoln	89	1,052	4	75	
Wye	Hereford	148	1,655	9	223	

Second Class Rivers, having Catchment Basins of from 500 to 1,000 Square Miles.

Avon	Somerset	78½	869	4	59	
Avon	Hants	67	666	1	28¼	
Dee	Flint	93	850	4	82	
Eden	Cumberland	79½	916	4	97⅓	
Ex	Devon	58½	562	5	81¼	
Medway	Kent	69	997	3	62½	
Parrett	Somerset	38½	561	4	106	
Ribble	Lancaster	61	501	4	90¾	
Tees	York	95	744	9	132	
Test	Hants	35¼	544	1	6¾	
Towy	Carmarthen	66⅓	522	3	55	
Usk	Monmouth	76⅓	650	7	107	
Welland	Northampton	72½	707	3	78	
Yare	Norfolk	35	533	4	84	

Third Class Rivers, having Catchment Basins of from 100 to 500 Square Miles.

Arun	Sussex	51⅓	349	–	–	
Adur	Sussex	21	147	–	–	
Alde	Suffolk	30¾	127	1	8	
Alt	Lancaster	16⅕	170	–	–	
Aln	Northumberland	24	102	–	–	
Axe	Devon	25¼	155	1	14½	
Blackwater	Essex	50	465	2	53	
Brue	Somerset	36¼	197	–	–	
Bure	Norfolk	52¼	338	1	11¼	
Camel	Cornwall	28¼	155	1	8¼	
Cleddau, Western	Pembroke	24½	116	–	–	
Colne	Essex	37¾	200	1	13½	
Conway	Carnarvon	30¼	224	3	29¾	
Coquet	Northumberland	45	213	–	–	
Crouch	Essex	20½	150	1	13¼	
Dart	Devon	37¼	179	1	10½	
Deben	Suffolk	32	159	1	10	
Derwent	Cumberland	35¼	268	1	13⅓	
Derwent	Derby	64½	429	3	37	
Dovey	Montgomery	35	264	5	44½	
Duddon	Cumberland	27¼	117	–	–	

Third Class Rivers, having Catchment Basins of from 100 to 500 Square Miles—*continued.*

Name.	County.	Length.	Area of Basin.	Tributaries.		Remarks.
				No.	United Length.	
		Miles.	*Sq. Ms.*		*Miles.*	
Elwy	Denbigh	31½	306	3	49¾	
Esk	Cumberland	8¼	143	2	35	
Esk	York	29½	136	3	25	
Fal	Cornwall	20½	118	1	9¼	
Fowey	- ditto	27	116	1	6¼	
Frome	Dorset	34	206	1	7¾	
Glaslyn	Carnarvon	18⅓	142	1	14¾	
Itchen	Hants	27¼	137	–	–	
Kent	Cumberland	28½	196	4	49	
Leven	Lancaster	6⅓	123	3	25	
Llwchwr	Carmarthen	22½	130	5	45	
Lune	Lancaster	53½	434	3	41¼	
Mawddach	Merioneth	21¼	147	3	26¼	
Neath	Glamorgan	24½	121	3	23½	
Ogmore	- ditto	15¾	111	3	27¾	
Orwell	Suffolk	35	257	–	–	
Ouse	Sussex	34¼	212	–	–	
Portsmouth and Chichester Basin.	-	–	315	–	–	
Rother	Sussex	33½	281	–	–	
Steeping	Lincoln	24	102	–	–	
Stour	Essex	61¾	420	2	34	
Stour, Great	Kent	52¾	291	1	12	
Stour	Dorset	64	479	2	25	
Taf	Carmarthen	31¾	187	2	27	
Taff	Glamorgan	38¼	202	6	59¼	
Tamar	Cornwall	55¾	381	2	32	
Tawe	Glamorgan	27¼	110	1	10½	
Teifi	Cardigan	70	389	8	57¾	
Teign	Devon	34½	189	–	–	
Titchfield	Hants	20¾	128	–	–	
Torridge	Devon	52½	349	2	30	
Trent, or Piddle	Dorset	21½	125	–	–	
Tweed	Northumberland	22	267	1	30	
Wansbeck	- ditto	27	183	2	27½	
Waveney	Norfolk	58¾	339	–	–	
Wear	Durham	70	455	6	74¾	
Wyre	Lancaster	35¼	179	2	20¼	
Yeo	Somerset	14½	127	–	–	

Fourth Class Rivers, having Catchment Basins of from 50 to 100 Square Miles.

Aeron	Cardigan	19½	63	–	–
Avon or Aune	Devon	23¼	55	–	–
Ax	Somerset	24	98	–	–
Blyth	Northumberland	26½	80	1	19½
Blythe	Suffolk	18¼	71	–	–
Cleddau, Eastern	Pembroke	19½	84	1	12¾
Cuckmare	Sussex	24	75	–	–
Daucleddau	Pembroke	11	76	–	–
Dysynni	Merioneth	14	64	–	–
Ehen	Cumberland	14½	59	–	–
Ellen	- ditto	20¾	54	–	–
Erch	Carnarvon	12	53	–	–
Germains, St.	Cornwall	8	95	2	35½
Lai or Ely	Glamorgan	24	64	–	–
Line Water	Northumberland	15½	50	–	–
Otter	Devon	27	95	–	–

Fourth Class Rivers, having Catchment Basins of from 50 to 100 Square Miles—*continued.*

Name.	County.	Length.	Area of Basin.	Tributaries.		Remarks.
				No.	United Length.	
		Miles.	*Sq. Miles.*		*Miles.*	
Plym	Devon	15	73	–	–	
Rheidol	Cardigan	25½	74	2	32	
Rumney	Glamorgan	35½	99	1	7	
Tavey	Devon	23	87	1	12	
Taw	ditto	48¾	77	3	49½	
Wampool	Cumberland	18	62	1	8	
Withern	Lincoln	20¼	91	–	–	
Ystwyth Eau	Cardigan	23¼	75	–	–	

Fifth Class Rivers, having Catchment Basins of from 10 to 50 Square Miles.

Afon	Cardigan	13½	39	1	5½
Afon-Fawr	Carnarvon	4¼	10	–	–
Alaw	Anglesea	18	32	–	–
Arth	Cardigan	9	14	–	–
Artro	Merioneth	8¼	33	–	–
Babingley	Norfolk	8¼	26	–	–
Beaulieu	Hants	12	30	–	–
Berryburn	Northumberland	7	12	–	–
Birk Head Beck	York	5½	21	1	5½
Braint	Anglesea	12¼	28	–	–
Bredy	Dorset	7¾	17	–	–
Brit	ditto	9¼	45	–	–
Buckbarrow Beck	Cumberland	6	16	–	–
Buckton Burn	Northumberland	6¼	16	–	–
Bude	Devon	8	31	–	–
Burn, Fleetham	Northumberland	10¾	27	–	–
Burn, Embleton	ditto	6½	10	–	–
Calder	Cumberland	8¾	23	–	–
Castle Eden Burn	Durham	8½	14	–	–
Cefni	Anglesea	13	48	–	–
Cegin	ditto	6¼	10	–	–
Char	Dorset	8	21	–	–
Clarach	Cardigan	8¼	18	–	–
Cocker	Lancaster	9	15	–	–
Cober	Cornwall	9	21	–	–
Coniston Water	Westmoreland	10½	36	–	–
Crigyll Haradoc	Anglesea	8	25	–	–
Crindon Beck	Durham	8¼	12	–	–
Cwm Wyrai	Cardigan	10¼	22	–	–
Dawlish	Devon	5¾	12	–	–
Ddaw	Glamorgan	13¼	45	–	–
Dry Burn	Northumberland	9	19	–	–
Dulas	Denbigh	7½	19	–	–
Dulas	Anglesea	6¼	15	–	–
Dwyfawr	ditto	12½	43	1	10
Erm	Devon	15	41	–	–
Esk	Cumberland	17½	43	–	–
Ffraw	Anglesea	7	18	–	–
Gilbert's Water	Cornwall	7¾	17	–	–
Gorfai	Carnarvon	10¾	28	–	–
Gwaen	Pembroke	9½	23	–	–
Gwendraeth Fach	Carmarthen	15¾	32	–	–
Gwendraeth Fawr	ditto	14	32	–	–
Hamble	Hants	11½	48	–	–
Hayter	Cornwall	10	42	–	–
Heddon	Somerset	5¾	16	–	–
Helford	Cornwall	9	36	–	–
Irt	Cumberland	16¼	48	–	–
Keer	Westmoreland	8½	17	–	–
Kilton Beck	Durham	6	20	–	–
Llihedi	Carmarthen	8	10	–	–

Fifth Class Rivers, having Catchment Basins of from 10 to 50 Square Miles—*continued.*

Name.	County.	Length.	Area of Basin.	Tributaries.		Remarks.
				No.	United Length.	
		Miles.	*Sq. Miles.*		*Miles.*	
Llyfni	Carnarvon	9¼	20	–	–	
Looe	Cornwall	9¼	42	–	–	
Ludd	Lincoln	16	45	–	–	
Lymington	Hants	13¾	47	–	–	
Lynn, East	Devon	11¼	37	–	–	
Medina	Isle of Wight	11	26	–	–	
Minsmere	Suffolk	12½	25	–	–	
Mite	Cumberland	8¾	10	–	–	
Nevern	Pembroke	13	45	–	–	
Newton	Isle of Wight	4½	22	–	–	
Ogwen	Carnarvon	10¾	31	–	–	
Pennar	Pembroke	8½	15	–	–	
Pillingwater	Lancaster	4¾	21	–	–	
Rousby Beck	Durham	8	22	1	6	
Scioni	Carnarvon	14½	36	–	–	
Seaton	Cornwall	10¾	22	–	–	
Seaton Burn	Northumberland	10¾	42	–	–	
Sid	Devon	6	14	–	–	
Sillybrook	Glamorgan	2	19	–	–	
Skelton Beck	Durham	8¾	37	–	–	
Sock	Carnarvon	10½	26	–	–	
Solva	Pembroke	9¼	18	–	–	
Stream	Anglesea	5	13	–	–	
Ditto	Pembroke	6¾	12	–	–	
Ditto	ditto	4¾	11	–	–	
Ditto	Somerset	7¼	28	–	–	
Ditto	ditto	9¾	18	–	–	
Ditto	ditto	10	18	–	–	
Ditto	Cornwall	7¼	14	–	–	
Ditto	ditto	8½	27	–	–	
Ditto	ditto	10¼	37	–	–	
Ditto	ditto	8	25	–	–	
Ditto	ditto	5½	13	–	–	
Ditto	ditto	6¾	10	–	–	
Ditto	ditto	3¾	10	–	–	
Ditto	ditto	3¾	10	–	–	
Ditto	ditto	6¾	12	–	–	
Ditto	ditto	7½	15	–	–	
Ditto	ditto	8	32	–	–	
Ditto	Devon	9¼	34	–	–	
Ditto	ditto	6¼	11	–	–	
Ditto	Hants	9¼	17	–	–	
Ditto	Isle of Wight	4	10	–	–	
Ditto	ditto	15¼	31	–	–	
Tetney Drain	Lincoln	19¼	44	–	–	
Waren Burn	Northumberland	9	20	–	–	
Waver	Cumberland	15¾	48	–	–	
Wey	Dorset	7½	19	–	–	
Wold Grift	Lincoln	11¾	26	–	–	
Yar	Isle of Wight	3	13	–	–	
Yealme	Devon	14	38	–	–	

RIVERS OF ENGLAND AND WALES.

Particulars of Lengths and Watersheds.

First Class Rivers, having Catchment Basins of 1,000 Square Miles and upwards.

1 exceeds 5,000 square miles.	Maximum Area, 5,162 square miles (Thames).
2 „ 4,000 „	Minimum „ 1,052 „ (Witham).
1 „ 3,000 „	
1 „ 2,000 „	Maximum length, including Tributaries - - - 688⅓ miles (Ouse).
6 „ 1,000 „	Minimum length, including Tributaries - - - 92 miles (Humber).
Total - - 11 No.	

Second Class Rivers, having Catchment Basins of 500 to 1,000 Square Miles.

2 exceed 900 square miles.	Maximum Area, 997 square miles (Medway).
2 „ 800 „	Minimum „ 501 „ (Ribble).
2 „ 700 „	
2 „ 600 „	Maximum length, including Tributaries - - - 227 miles (Tees).
6 „ 500 „	Minimum length, including Tributaries - - - 42 miles (Test).
Total - - 14 No.	

Third Class Rivers, having Catchment Basins of 100 to 500 Square Miles.

6 exceed 400 square miles.	Maximum Area, 479 square miles (Stour, Dorset).
8 „ 300 „	Minimum „ 102 „ (Aln and Steeping).
12 „ 200 „	
33 „ 100 „	Maximum length, including Tributaries - - - 144¾ miles (Wear).
Total - - 59 No.	Minimum length, including Tributaries - - - 14½ miles (Yeo).

Fourth Class Rivers, having Catchment Basins of 50 to 100 Square Miles.

5 exceed 90 square miles.	Maximum Area, 99 square miles (Rumney).
3 „ 80 „	Minimum „ 50 „ (Line Water).
7 „ 70 „	
4 „ 60 „	Maximum length, including Tributaries - - - 98¼ miles (Taw).
5 „ 50 „	Minimum length, including Tributaries - - - 11 miles (Dancleddau).
Total - - 24 No.	

Fifth Class Rivers, having Catchment Basins of from 10 to 50 Square Miles.

16 exceed 40 square miles.	Maximum Area, 48 square miles (Hamble, Irt, Cefni, and Waver).
18 „ 30 „	Minimum Area, 10 square miles (Avon and others).
25 „ 20 „	
20 „ 15 „	Maximum length, including Tributaries - - - 22½ miles (Dwyfawr).
23 „ 10 „	Minimum length, including Tributaries - - - 2 miles (Silly Brook).
Total - - 102 No.	

	No.
1st Class Rivers - - - - - -	11
2nd „ - - - - - -	14
3rd „ - - - - - -	59
4th „ - - - - - -	24
5th „ - - - - - -	102
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I N D E X.

[*N.B.*—In this Index the *Figures* following the Names of the Witnesses refer to the Questions in the Evidence; those following *App.* to the Pages in the Appendix; and the *Numerals* following *Rep.*, to the Pages in the Report.]

A.

ABERNETHY, MR. JAMES. (Analysis of his Evidence.)—Is a Civil Engineer, and has been much engaged in river engineering abroad, especially on the Danube, the Grand Cavour Canal in Italy, and the River Theiss in Hungary, 393–395, as well as in this country, 396.

Has specially inspected the River Ouse, and finds floods there are caused by the defective state of the outlets, by the deterioration of the river by shoals and weeds, and by the want of subsidiary channels for the flood-water, 398——The growth of weeds has much increased since the navigation has gone out of use, 399, 402–405——Description of the drainage works constructed by Sir Cornelius Vermuyden, which answered very well for a long time, but now a bank has been erected across the Wash lands (which are low-lying lands, over which it is intended that floods should flow), 400, 402——Has no doubt that floods have been increased by the improvement of land drainage, 401, 415, 514 *et seq.*

Was employed by a voluntary committee of landowners, 408, to investigate the floods between Huntingdon and Earith, but found that any local works in that district would increase floods below and above, and therefore came to the conclusion that all the rivers discharging into the Norfolk estuary (including the affluents, 413) must be dealt with as a whole, 407, 412——It is practically impossible to carry out any effective works under the Act of 1861, from the large number of consents required, 417–419.

Witness makes statement as to the River Nene; gives list of the various bodies having charge of the river banks, and thinks the failure of the works is owing to the number of independent authorities, 427–433, 457–461——Under the Act of 1852, it was proposed to deepen the whole river for the improvement of both navigation and of drainage, and certain works were done (the outlet at Lynn was much improved, 450) but they have proved of no use, as the whole scheme was not completed, 458——A very large debt remains, and the lands are very heavily taxed; some belonging to Lord Huntly, near Peterbrough, as much as 15 *s.* an acre, 548——The probable increase of the value of the land (to be attained by the scheme) was calculated in advance, and rates imposed on that scale, but as the advantages were contingent on the whole scheme being carried out, next to nothing has been gained, and the lands that now actually suffer most (but that were expected to have profited most, 467 *et seq.*) are the heaviest rated, 461, 474.

See also *Percival.* *Nene.*

Does not approve of removing weirs or of deepening or widening rivers to any extent, as the lands would suffer from drought in summer, 475, 541, 553——Opinion that there is no incompatibility between proper drainage and maintenance of navigation, 512——Thinks that rivers ought to be embanked at some distance from the ordinary water-course, leaving pasture lands (free from obstruction, 571) by the side, on which floods could spread without doing much damage, 480, 483, and which would serve as a broad channel for flood water, 475, 476, 563 *et seq.*——The breadth of the meadow lands would have to depend on the probable quantity of flood water, 478, 481——If the water passed quickly off the meadows they would be rather improved than deteriorated, 484——The waste lands would remain the property of the present owners, 578, but under regulation as to fencing, planting, &c., 564, 570——Thinks that provision will soon have to be made for storage of water for irrigation, but that this will not affect floods, 585–587.

Recommends that the whole catchwater area of each river should be placed under one body of Commissioners, 422–499, 530——With Local subordinate Boards, 422, 446——The

Report, 1877—*continued.*

Abernethy, Mr. James. (Analysis of his Evidence)—*continued.*

——The whole to be under a Government Department, which would work by means of inspectors, 423–425, 439, 441–448, 505——Approves of the Provisional Order system, 435——The Commissioners should have power to remove mills, 497, 539——to supersede all Local Acts, 501——and all local authorities, 445, 531——to assess taxation, 443, 519——In every case with power of appeal to the Central Government Board, 434, 440, 448, 504.

Lands formerly subjected to floods and freed by the works, should be taxed in a certain proportion, and the uplands whence water is thrown more rapidly by improved drainage, should be taxed in a less degree, 423, 426, 442, 523 *et seq.*

Acts of Parliament. See *Legislation. Private Acts. Remedies Suggested* (*Legislation*). *Thames Valley Drainage Act*, 1871.

Agricultural Drainage. Very general opinion that the improvement in agricultural drainage of late years has materially increased floods by sending down the rain water much more rapidly, *Peel* 313–315; *Abernethy* 401, 415, 514 *et seq.*; *Coote* 596; *Grantham* 951–955; *Percival* 1052; *Brundell* 1067, 1076; *Tweed* 1951; *Tebbutt* 2022; *Mills* 2357; *Hawkshaw* 2797, 2811.

It has increased floods not only by sending down the water more rapidly, but also by sending down an actually larger quantity; much used to lie on the land till it evaporated, which is now required to be carried off by drains, *Denton* 2282 *et seq.*, 2412 *et seq.*

On the other hand, Mr. Rawlinson says it has not affected really severe floods, though it no doubt has effect during ordinary rainfall; when the ground is thoroughly saturated, injurious floods occur, and that depends simply on the amount of rainfall, *Rawlinson* 160–163, 219, 256–262, 272.

Committee report that there is a very general adoption of opinion that agricultural drainage has increased floods, *Rep.* iii.

Aire and Calder. Great floods on, causing heavy damage; railway viaduct destroyed at a loss of 50,000 *l.*, *Rawlinson* 155, 283; *Tarbotton* 1289 *et seq.*——Weirs on these rivers tail up the flood water, *ib.* 1291.

From the quantity of valuable manufacturing property on the banks of these rivers, embanking would be impossible from the expense, and the depth of them must be increased by dredging, *Rawlinson* 169.

The Aire and Calder Navigation has jurisdiction over a small portion of the rivers, *Bartholomew* 1681, 1704——These districts are subject to floods, but there is no authority over a sufficiently large area to prevent them, *ib.* 1712——Witness recommends the appointment of a board for the whole catchment area of each river separately (rather than for both rivers together, *ib.* 1729, 1742), composed of county magistrates, mayors of towns and representatives of navigation interests, *ib.* 1692, 1702; with power to rate the whole catchment area (as a county rate), to embank, make new cuts, and prevent pollution, *ib.* 1684–1691, 1697–1699, 1750.

Appeal. Right of appeal against a drainage rate is one of the weak points in General Drainage Acts and Thames Valley Act——Assessing rates according to probable benefit is very difficult, and there are certain to be appeals against them——This uncertainty diminishes the utility of rates as a borrowing security, and may be cause of great delay, *Hawkins* 2698–2703; *Hawkshaw* 2822, 2823——Rating should be settled by Government inspectors without appeal, *Hawkins* 2698.

Recommendations that there should be an appeal from river boards (as to area and incidence of taxation), to Quarter Sessions, *Ridley*, 70; *Grantham* 917——to Government boards in London, *Abernethy* 443——Advantage of Provisional Order system in giving an appeal to the Committees of both Houses of Parliament, *Peel* 347; *Percival* 1021.

Advantage of dealing with each case by separate Private Act, that area and incidence of rating would be clearly set out, and after the Bill had passed, there would be no appeals and consequent delay, *Hawkshaw* 2822.

On the Don there is a right of appeal to Quarter Sessions against rate assessed by inspector appointed by conservators, but it has never been had recourse to, *Brundell* 1124.

Assessment. See *Benefit. Height. Rateable Value. Rating, Existing Powers of. Remedies suggested* (*Rating*). *Uplands.*

Avon (*Hampshire*) *River.* This river, and the Stour, and the Heron are subject to floods which are very valuable; witness thinks nothing is required to be done on these rivers, *Earl of Malmesbury passim*, and 2577–2647——The mills are an obstruction increasing floods, but the occupiers of land below them see that the millers behave fairly in opening their sluices, and not keeping the river up above a certain level, *ib.* 2584–2589.

Report, 1877—*continued.*

Avon (Warwickshire) River. This river is now under no jurisdiction; it should be placed under the Severn Conservancy Board; tolls on the increased traffic would pay for a considerable portion of the expense of the works required, *Williams* 1630–1633——The owners of the district must then be represented on the Board, *ib.* 1638 *et seq.*

P

Bartholomew, Mr. William Hamond. (Analysis of his Evidence.)—Has been for twenty-five years General Manager and Engineer to the Aire and Calder Navigation, 1672–1674——The drainage area of the Aire and Calder before their junction with the Ouse is about half a million acres, 1674–1677.

The Airedale Drainage Commission has a jurisdiction over a small part of the river above Leeds, and the Aire and Calder Navigation (established under several Acts, 1682), extends from Leeds and Wakefield to within ten miles of the junction of the joined rivers with the Ouse, 1681, 1704, 1705——The district is subject to severe floods, but there is now no authority on a sufficiently large area to prevent them, 1712——The Navigation has stopped pollution in this portion of the river, but it has no power to prevent it in the tributaries, 1710.

Recommends establishment of a board for the whole catchment area of each river, 1692; composed of county magistrates, mayors of towns, and representatives of navigation interests, in equal numbers (local authorities alone are very difficult to put in motion, as they frequently create the nuisance to be remedied), 1702——The Board should have power to cut off the bends of rivers, to prevent pollution, and to carry out the Salmon Fisheries Act, 1695, 1699——An opinion is generally entertained that the Pollution of Rivers Act, 1876, is likely to be inoperative, 1733–1741——Embankments would sometimes be necessary, but reservoirs would be of no service in preventing floods, 1685, 1686.

The rate should be a county rate, but should only fall on the districts benefited, and be raised as the poor rate, 1688–1698.

Parliament might divide the whole country into drainage areas, or might pass a General Act, under which districts could easily be formed (compulsorily in case of neglect); there should be a local inquiry by a Government Inspector, and a Provisional Order, so that there may be an appeal to a Parliamentary Committee, 1692, 1700, 1701, 1711, 1721–1727.

Thinks that as the circumstances of each river vary so much there should be a board for each river (as for the Aire and Calder separately, 1729), and that it would be impossible to have one board for all the tributaries of the Ouse; witness thinks that the different boards being carefully chosen, would work harmoniously together for the public good, 1742–1752.

Bedford Rivers. Description of the Old and New Bedford rivers; they enclose between them 5,000 acres of washlands, over which flood water was intended to flow, but owners have since raised a bank across and prevented this, consequent floods above, *Peel* 307, 308; *Abernethy* 400.

See also *Vermuyden.* *Washlands.*

Benefit. Principle that rating for drainage should be according to benefit received from works, *Ridley* 25–31; *Peel* 339.

Recommendations that this should continue to be the standard of proportionate rating, *Ridley* 67; *Rawlinson* 183; *Peel* 349; *Brundell* 1129; *Williams* 1620; *Tweed* 1911; *Mills* 2315; *Hawkins* 2760, 2761; *Hawkshaw* 2795.

Opinion of the Committee that this principle of rating is unfair in some cases and inapplicable in others, *Rep.* vi.

See also *Legislation.* *Rateable Value.* *Rating.* *Remedies suggested.*

Bridges. Are often not sufficiently large to pass off floods, *Peel* 319, 322, 326; *Denton* 2464–2468——The removal of old London Bridge very much increased the height of the tide above it, *Rawlinson* 216——The removal of the old Trent Bridge and the substitution of a new one at Nottingham, lowered the level of the water above it by eighteen inches, *Tarbotton* 1212——Bridges are an obstruction at Burton, *ib.* 1243, 1244.

The river authority should have some supervision over the bridges erected by railway companies, to insist on their being of proper dimensions, *ib.* 1237.

Brundell, Mr. Benjamin Shaw. (Analysis of his Evidence.)—Is a Civil Engineer of the town of Doncaster, and well acquainted with the River Don, 1063–1065; and represents professionally a district of 15,000 acres near the outfall of the river, 1078——The floods have increased of late years, owing to the better agricultural drainage, 1067, 1076, and to the filling up of the river by manufacturing refuse, 1068, 1071——The

Report, 1877—*continued.*

Brundell, Mr. Benjamin Shaw. (Analysis of his Evidence)—*continued.*

flood in 1872 is said to have done 70,000*l.* worth of damage to 15,000 acres of land, and other portions of the river have suffered as much, 1081, 1086, 1182.

In 1872 the district with which witness is connected obtained power by Act to raise their banks, &c., but in order to avoid opposition of district below, works less than they should have been were proposed, 1079–1094——These works (costing altogether 40,000*l.*, 1105) have rendered them safe against the ordinary floods, of which there used to be two or three a winter, 1095–1097, 1112; but not against exceptionally severe floods, 1091, 1097.

The rate for works is raised as a proportionate benefit rate (estimated by an expert appointed by the Board of Commissioners) with an appeal to Quarter Sessions, and land pays according to its height above the outfall, 1120–1124——Witness complains of large expense falling on a small district near the outfall on a river which is the main drain of a large area of country, 1098.

Recommends a Conservancy Board for the whole river from end to end, 1104; including the tributaries, 1127; with power to rate, for main works, the whole area, according to benefit conferred, to be determined by an expert; there should be smaller district Boards to carry out minor works, with power to rate their districts, 1129—— The scale of rating should be revised every few years to prevent injustice, 1176.

Towns must be included in scheme, and pay according to benefit gained, 1143, 1144, 1194——Means should be taken to prevent pollution, which does great injury, 1158–1166.

The works required would be first, embanking; secondly, the alteration of weirs, so that in case of floods they should fall flat, 1169, 1170——Agrees that weirs only affect lands immediately above them, but as they are close together that means nearly the whole river, 1171.

Burton-on-Trent. Serious floods here are caused by insufficiently sized bridges, *Tarbotton* 1243, 1244——Alleged aggravation of floods by railway embankment here, *Hawkshaw* 2807–2809——Opinion that Burton can be protected against floods without injuring any other place, *ib.* 2830–2833.

See also *Tarbotton.* *Trent.*

C.

Canals. Number of private Acts relating to navigations interfere with operation of general Acts, *Ridley* 36–39——There ought to be some power of removing obligation to maintain navigations when they have become useless, *ib.* 49, 50, 84, 88, 127, 128.

See also *Navigations.*

Centralisation. Opinions that all Government interference should be avoided; owners and occupiers can manage their own affairs best, *Coote* 617, 634; *Hawkshaw* 2842, 2864——Any inhabitant injured by floods should have a power of indictment against Conservancy Board, *Coote* 633.

Witness thinks that all questions disputed by members of river boards should be referred to a central Government Board, so that a minority should in no case be outvoted by a majority, *Percival* 1018, 1021, 1033.

Opinion that there should be a Government Board in charge of arterial river drainage, *Rawlinson* 196; *Peel* 345; *Abernethy* 423, 424, 448; *Bartholomew* 1725, 1727; *Hawkins* 2711, 2717, 2743.

Child, Mr. Joe. (Analysis of his Evidence.)—Is Engineer to the Lee Conservancy Board, 1368——This river is liable to floods, but not such as to do serious damage; the lands flooded are mostly marsh lands, and there are no houses flooded, 1369–1373——The navigable part of the river is kept well dredged, and thus there are hardly any floods in that part, 1374, 1378—— The back rivers are subject to floods that do more harm; they are under no jurisdiction, and certain works might be done at the expense of the persons benefited, 1383, 1390, in clearing the river and straightening it, 1388; but the damage is not great, and there is no real demand for this, 1392, 1393.

There are many weirs in the Lee, and it is by having improved them by substituting iron posts for the old wooden ones that the flood-water is passed down so satisfactorily, 1396, 1397——These weirs have lifting gates, and they are lifted when the floods are up, and the river has its free course, 1398——Witness thinks that a great improvement might be effected in many rivers by having these sort of weirs; in many cases the weirs are still of stone, forming a complete dam across the river, 1399; and the better system could be adapted to a great extent even to the larger rivers, 1400.

Compensation. River boards must have power to give compensation out of rates for mills, &c., interfered with, *Ridley* 112; *Abernethy* 498; *Tarbotton* 1261; *Lloyd* 1521—— Meadows now benefited by floods must have irrigation provided in compensation if they suffer by drainage works, *Ridley* 144.

Compulsion.

Report, 1877—*continued.*

Compulsion. To insure proper and uniform dealing with floods it is not sufficient to trust to voluntary action; an authority should be set up over each river or district compulsorily, *Ridley* 51, 91–94; *Rawlinson*, 182; *Peel* 331, 343, 360; *Abernethy* 434; *Coote* 615, 617; *Roberts* 764; *Grantham* 820; *Percival* 1014; *Brundell* 1127–1129; *Bartholomew* 1722 *et seq.*; *Tebbutt* 2046; *Denton* 2493; *Hawkins* 2708 *et seq.*, 2724.

See also for expressions implying a similar opinion, *Turbottom* 1217, 1219, 1259; *Lloyd* 1461, 1497; *Williams* 1619; *Tweed*, 1924, 1959; *Mills* 2313, 2317, 2327.

For details of various suggestions, *see* Remedies Suggested (Management).

Recommendation of the Committee that the appointment of a conservancy authority in each watershed area should be ensured, but that this should if possible, result from the application of persons interested in each locality, *Rep.* v.

Consent of Owners. Number of consents of owners required before anything can be done is one of the great difficulties of carrying out the Land Drainage Act of 1867, *Peel* 335; *Abernethy* 418 *et seq.*; *Lloyd* 1547; *Hawkins* 2755, 2780——Of carrying out the Irish Drainage Acts, *Roberts* 753.

Consolidation. All Acts relating to the question of drainage and prevention of floods should be consolidated, *Ridley* 78——Necessity of passing a general Act (like the Lands Clauses Consolidation Acts, &c.), under which Provisional Orders could be issued for individual cases, and of which the provisions should attach to special Order, *Peel* 343–348; *Abernethy* 435; *Grantham* 868; *Percival* 1018–1021; *Bartholomew* 1700, 1701, 1723–1727.

Recommendation of Committee that such a General Act should be passed, *Rep.* v.

Coote, Mr. Thomas. (Analysis of his Evidence.)—Lives at St. Ives, and is Chairman of the St. Ives Ouse Floods Committee, formed voluntarily to remedy the floods there, 588–591——After forty years' experience, thinks that floods are now more frequent and last longer than formerly, 592, 593——And extend over a greater extent of arable land, 597——Increase of floods is caused by neglect of rivers and by improved land drainage, 596.

The River Ouse is contracting owing to silt and weeds, 594, 595——It is neglected owing to disuse of the navigation, 602——And there is no body having authority on the river, 608——Any improvement in the upper part of the river would only make matters worse in the lower part, unless the outfall at Earith were improved, 606——The lands near this river suffer very much from drought in the summer as well as from floods in winter, 642.

Thinks the whole valley of the Ouse with its tributaries should be under one Board, 614——With local representation according to annual contribution, settling its own taxation (with no reference to a Government Board) on the basis to be laid down in an Act of Parliament, 614–621——The uplands as well as the lands on the river should contribute, 620; and the Board should have compulsory powers of rating, or the upland proprietor would pay nothing, 631——Witness thinks that the flooded districts might pay about twelve times as much as the districts which only send down water, 622——And that the towns should also contribute, 624.

Land Drainage Act of 1861 would not meet the case of the Ouse, as it gives no power to tax towns or do works outside immediate district, 636——Thinks that, though storage of water would be advantageous, it would have no effect on floods, 625–644——And that mills if they were under proper regulations would not aggravate floods, 645, 646——Disapproves of Government interference; the districts could best manage their own affairs, 634–639——The formation of Conservancy Boards over the main rivers should be compulsory, and witness would give power of indictment to any person injured by floods against the Conservancy Board if the river were not kept in proper condition, 633.

Corble, Mr. George. (Analysis of his Evidence.)—Is Clerk to the Lee Conservancy Board, 1401——That Board was constituted in 1868 for the prevention of pollution and for the government of the navigation, after an inquiry by the River Pollution Commissioners, 1403——All the revenue of the Conservancy is derived from charges at the locks, 1407——and an allowance not exceeding 1,000 *l.* a year (and which is generally less) from the water companies taking water from the river, to be spent for the prevention of pollution, 1408, 1409, 1426–1433.

In the Report of the River Pollution Commissioners it was recommended that the Board should have power to carry out works of arterial damage, and to prevent floods, but these powers were not inserted in the Lee Conservancy Act, 1416——There are no floods to speak of in the district of the Board, 1417——Some power might be given them for dealing with the drainage of the upper tributaries, over which there is now no authority at all; but any works required would be merely local works, 1421.

Report, 1877—*continued.*

Corrib, Lough. In this district works on a large scale for the improvement of navigation and mill power in conjunction with drainage, have been successfully carried out under the existing Irish Drainage Acts, *Roberts* 781.

D.

Denton, Mr. John Bailey. (Analysis of his Evidence.)—Is an engineer of great experience in drainage matters 2380—— Gives various statistics as to the rainfall and flood-water in England, 2383.

States that improved drainage of land has increased the quantity of water to be carried off by the rivers, as a great quantity of water is now rapidly drained off and sent down to the sea, which, before the establishment of the drainage, would have evaporated, 2283, 2412, 2416——The rainfall in England has not been diminished nor drought increased by this diminished evaporation, because in an island the moisture rising from the land bears such a small proportion to that coming from the sea, 2397, 2400, 2410, 2426.

Floods in some cases, when they do not stay long on the land, do it good, and in some soils they bring down a valuable deposit, but on the whole they are injurious from being so entirely beyond control, 2418, 2425.

Besides the obvious evil of pollution by manufacturing refuse, witness calls attention to the quantity of road detritus washed down into the streams, 2427, *et seq.*—— States that owing to this constant bringing down of solids by rivers, by which the bed and bank have been raised (and to which result mills and weirs have contributed) the river-bed is seldom at the lowest level of the valley, and in many cases with extended jurisdiction, means would exist of so using the side streams as to improve the outflow of flood-water, 2434, *et seq.*; by attending to this remedy there would be provided a storage of water very useful in time of drought, and there would be a creation of very valuable water power, 2435——No storage of water would have any appreciable effect in preventing floods, 2459-2461.

From wells which provide water unfit for drinking purposes there could frequently be procured a supply for other domestic purposes, 2452——A double supply of water exists at Shrewsbury; and this may answer when the pure water has to be brought from a distance, though, of course, there is the expense of a double set of pipes, 2453–2457—— By filtering, and underground storing, a supply of good water could be afforded to villages in summer, 2480——The water in rivers and shallow wells is gradually becoming worse, owing to the use of chemical manures, 2492——Approves of the Reservoirs Bill now before Parliament, which gives authority to landowners to make reservoirs and supply water to villages, receiving repayment from the sanitary authorities, 2484–2489.

Lands could often be drained by sinking shafts through impervious into water-bearing strata, 2461, 2462, 2471–2475.

Bridges are often insufficiently sized, and aggravate floods, 2464–2468; and so also sometimes do railway embankments, 2470.

Instance on the Lee of evil of restricted jurisdiction; the village of Stevenage, with a population of 2,500, is now executing drainage works to turn its sewage into a tributary of the Lee, whence the drinking water of part of London is derived——The Lee Conservancy having authority for a very small distance from the actual river, 2499, 2503.

Recommends the establishment of a central Board for each river, 2443, as the only means of reconciling the many antagonistic interests that exist on the same stream, 2447, 2448——The area subject to the Board should be co-extensive with the river however large; when the catchment basin is very extensive, say over 1,000 square miles, there might be subordinate authorities for the tributaries or districts of the river, and from these bodies should be constituted the main governing Board, 2493——In the case of the Humber, the estuary should be under representatives of the boards of each constituent river, 2494–2497——The Board should have jurisdiction as to navigations, water supply, the discharge of sewage into rivers, mills, and weirs, and the supply of water for agricultural purposes, 2504, 2512——No proprietor of land within the flood limits, should be allowed to do anything which might affect the floods (such as planting, fencing, &c.) without leave of the Board, 2514, 2522, 2525-2527——The Board should have no power to execute works in the upper part of the watershed, or on the higher levels, 2513, 2516; a certain fixed height above water-mark should be the limit of the jurisdiction for works, 2517.

The upper lands which help cause the mischief, should pay a small proportion of the cost of the main river drainage, 2498, to be assessed according to the parish rate-book; and besides this general rate, land benefited should pay according to the benefit received, 2499, 2505–2511.

Report, 1877—*continued.*

Derwent River. Ten miles of the Upper Derwent are drained under the Muston and Yedingham Drainage Act, *Mills*, 2254 *et seq.*——Land below a certain level is rated in proportion to its height above the river, according to a scale fixed at the passing of the Act, *ib.* 2269 *et seq.*——This district is now freed from floods, *ib.* 2285, 2310——The rest of the Derwent is subject to very severe floods, *ib.* 2286——Witness thinks the whole river should be under one Conservancy Board that should take the whole management of the banks out of the hands of individuals, *ib.* 2312 *et seq.*, 2354——raising a rate according to the height land lies above the exit point of its drainage; any field having a natural fall of, say five feet, not to be taxed, *ib.* 2316 *et seq.*, 2343——On this river the weirs aggravate floods as there are no floodgates, *ib.* 2370-2373.

See also *Humber.*

Don River. The floods on the Don are getting worse, *Brundell* 1066——partly from improved agricultural drainage and partly from the river being filled up by manufacturing refuse, *ib.* 1067-1068——The lower twenty miles have been embanked, and there the increased scour keeps the bed clear, *ib.* 1072——The damage done by the floods is very great, *ib.* 1077, 1086; all along the valley of the river, *ib.* 1078, 1181, 1182.

The floods from tidal waters are very useful, bringing up warp on to the land flooded, *ib.* 1163——But the floods from above do great injury by washing down and leaving on the land manufacturing refuse, *ib.* 1158.

Various districts have done works which are of some use, and free immediate localities from the minor floods, *ib.* 1091-1099——The whole river should be under one authority, that a complete system may be carried out, and no district allowed to protect itself by damaging its neighbour, *ib.* 1101.

Draft Report, proposed by the Chairman of the Committee. Adopted, with several amendments, *Rep.* xii.

Drainage Districts. List handed in of drainage districts formed under Land Drainage Act, 1861, *Ridley* 4; *App.* 279, 280——List of applications under that Act, and whether successful, *Grantham* 792; *App.* 281——Only differ from Commissions of Sewers in mode of appointment, *Grantham* 795.

Recommendations that drainage districts should be co-extensive with watersheds of rivers, *Ridley* 51; *Rawlinson*, 182 *et seq.*; *Peel* 331; *Abernethy* 422; *Coote* 617; *Roberts* 752; *Grantham* 819; *Percival* 1009, 1054; *Brundell* 1104; *Tarbotton* 1256; *Lloyd* 1461; *Williams* 1600; *Bartholomew* 1692; *Tweed* 1903, 1958; *Tebbutt* 2012; *Mills* 2312, 2377; *Denton* 2443, 2493-2497; *Lowndes* 2557; *Hawkshaw* 2793, 2875——with sub-districts, *Ridley* 55; *Rawlinson* 182; *Peel* 331 *et seq.*; *Abernethy* 446; *Grantham* 858; *Percival* 1026; *Brundell* 1129; *Denton* 2493-2497.

See also *Commissioners of Sewers.*

Drainage of Land. See *Agricultural Drainage.*

Dredging. Too expensive to be a usual remedy against floods, *Rawlinson* 167, 210——But must be resorted to when the banks are lined with manufactories, &c., *ib.* 169——Or where a greater depth is required for navigation purposes, *ib.* 210, 241——Dredging is the most necessary work, not to lower the natural bed of the river, but to reduce it to its original level which neglect has much raised, *Tarbotton* 1252.

E.

Embankments. The only general remedy against floods as they would not be so expensive as dredging, *Rawlinson* 164, 207——Would not raise the bed of rivers by confining the silt brought down to the channel, as the velocity of the stream would be increased by them, *ib.* 180——Where meadows obtain benefit from floods, the embankment need not be immediately upon the river, *ib.* 185, 189, 227——There must then be arterial drainage provided on the land side of the embankment, *ib.* 186, 187, 207, 230——Are necessary in most cases, *Roberts* 745; *Brundell* 1169; *Tarbotton* 1273; *Mills* 2368.

Embankments should be at a distance from the stream, leaving meadows for the floods to flow harmlessly over, *Abernethy*, 475, 484.

Increased scour, when river is embanked, prevents rivers being choked as they otherwise would be from neglect, *Brundell* 1170; *et seq.*

Embankments raised by riparian owners to protect themselves, or by Boards with limited jurisdiction, may often cause worse floods to their neighbours, *Peel* 298, 388; *Roberts* 746; *Brundell* 1084; *Mills* 2305.

Instances of embankments being destroyed from their being under no supervision, *Tweed* 1890; *Hawkshaw* 2828, 2853——Decision in case of Hudson *v.* Tabor that frontager is under no common law obligation to maintain embankments against floods, *Macturk* 2118.

One of the causes of failure in dealing with Thames floods is that there is no power to embank on private property, *Rawlinson*, 269.

Report, 1877—*continued.*

Embankments—continued.

Recommendation of the Committee that in those cases where embankment and interference with proprietary rights are necessary, the extent of this interference should be set out in the Provisional Order, Rep. v. vi.

See also *Washlands.*

Evaporation. Water that used to lie on undrained land till it evaporated is now carried off (as an additional quantity) by drainage to the rivers——Rainfall not practically affected by this, as moisture evaporated in an island from land bears so small a proportion to that from sea, *Denton* 2283, 2397, 2400, 2410, 2412, 2416, 2426.

F.

Famine (Irish). Drainage works in Ireland were extensively carried out for the purpose of affording work during the Irish famine (1845 to 1847) regardless of their being remunerative, *Roberts* 655, 666——The money was lent by the Commissioners of Public Works at four per cent. *ib.* 681; out of 2,390 612 *l.* expended under the Acts of 1842 and 1845, 1,337,868 *l.* was afterwards remitted by Government, *ib.* 655, 696.

Fens. Proprietors of fen lands in the Nene are opposed to improvement of Nene bed lest the tide should come up, and water which they require for agricultural purposes become brackish, *Percival* 1004, 1005.

See also *Middle Level District. Nene. Witham.*

Floods:

Advantageous in many cases to meadow lands (this frequently prevents occupiers taking steps against floods lest they should be altogether deprived of them), *Ridley* 144; *Lloyd* 1472, 1475.— In winter, but not in summer, *Percival* 1053.——By depositing silt, *Williams* 1594.——When not lying on land too long, *Rawlinson* 154; *Hawkins* 2748.

On the Hampshire, Avon, Stour, and Heron, floods are very valuable; and even if it were possible, it would be most undesirable to prevent them, *Earl of Malmesbury* 2582, 2597, 2610, 2633.

Though they are sometimes advantageous, yet as they are beyond control, the balance of advantage would be not to have them, *Denton* 2418–2425.

Committee report that floods are not necessarily prejudicial, and that where they are, it is generally from lying stagnant too long. *Rep.* iii.

Floods, Causes of Increase of:

Very general opinion that floods have increased of late years in frequency and injurious effects, *Peel* 313; *Abernethy* 414; *Coote* 593; *Grantham* 891; *Percival* 1003; *Brundell* 1066; *Tarbotton* 1198, 1232; *Tweed* 1950; *Tebbutt* 2033; *Mills* 2357; *Denton* 2382 *et seq.*, 2412–2414.

There are exceptions to this opinion; *Rawlinson* 161; *Earl of Malmesbury* 2608.

Opinion of the Committee, *Rep.* iii.

(i.) *Agricultural Drainage.* Improvement in land drainage one of the principal causes of floods, by sending down rain water more quickly, *Peel* 313 315; *Abernethy* 401, 415, 514; *Coote* 596; *Grantham* 951–955; *Percival* 1052; *Brundell* 1067, 1076; *Tweed* 1951; *Tebbutt* 2022; *Mills* 2357; *Hawkshaw* 2797, 2811; and by sending down a greater quantity as less is evaporated, *Denton* 2282 *et seq.*, 2412 *et seq.*

Of a contrary opinion is Mr. Rawlinson; better land drainage has not increased severe floods generally, though it may have done so in small districts; to cause injurious floods the land must be fully saturated to the top, and the flood is simply proportioned to the quantity of rain falling after that, *Rawlinson* 160–163, 219, 256–262, 272.

(ii.) *Navigation.*—Floods have increased since the cessation of water navigation, owing to railway competition, and the consequent neglect of streams and canals, *Peel* 319; *Abernethy* 399; *Coote* 594, 602; *Grantham* 810, 892, 904; *Furley* 1311; *Tebbutt* 2011; *Taunton* 2216.

Obligation to keep up a certain depth of water for navigation sometimes causes floods in districts above, *Tweed* 1947.

(iii.) *Mills and Weirs.*—Often increase floods, especially as the weirs are generally of bad construction, and with no floodgates, *Peel* 319; *Grantham* 810; *Brundell* 1170; *Tarbotton* 1232, 1283–1287; *Child* 1397–1400; *Lloyd* 1470, 1509; *Williams* 1662; *Mills* 2370–2373.

Millers frequently encroach and raise the sills of their weirs, as there is usually no authority to control them, *Rawlinson* 280; *Peel* 319, 354; *Grantham* 894.

(iv.) *Bridges.*

Report, 1877—*continued.*

Floods, Causes of Increase of—continued.

(iv.) *Bridges.* Are often insufficiently large and hold up flood-water, *Peel* 322–326; *Tarbotton* 1243, 1244; *Denton* 2464–2468——The removal of the old Trent bridge at Nottingham and substitution of a new one made a difference of 18 inches in the height of the water above, *Tarbotton* 1212.

(v.) *Pollution.* Rivers are materially lessened in size by pollution by solid substances, *Rawlinson* 165, 247; *Brundell* 1068–1071; *Bartholomew* 1710—— Besides manufacturing refuse, there is a constant washing of road detritus from all large towns into rivers, *Denton* 2427——The floods do much more harm to land now from being charged with chemical refuse, *Brundell* 1158.

See Rep. iii.

Floods. Instances of injury done by floods in the Aire and Calder district, *Rawlinson* 155; *Tarbotton* 1289, 1291——On the Thames when the water stands for any length of time, *ib.* 154——At Lincoln and in the Witham district, *Tweed* 1870 *et seq.*——In Somersetshire, *Peel* 309——On the Don district, along 15 miles of the river, about 15,000 acres suffered in 1872 damage to the amount of 70,000 *l*, *Brundell* 1081, 1077, 1181–1183 (Injury done by floods much increased by chemical pollution, *ib.* 1158 *et seq.*)——At Nottingham, *Tarbotton* 1200–1203——In Yorkshire, *Macturk* 2119–2120.

Floods. Unavoidable in certain districts, though much can be done to pas them off more rapidly; on the Wye and Lug, *Lloyd* 1457, 1539 *et seq.*——On the Severn, *Williams* 1595——These rivers drain a very large mountain district, and are subject to very rapid floods, which there is some evidence to show have not been seriously increased, as in most rivers, by improved drainage, *Lloyd* 1475, 1539; *Williams* 1644.

Foreshore. Board in charge of river should have power to execute works between high and low water mark, *Ridley* 59, 73, 139.

Remark of the Committee that when the rights of the Crown on the foreshore are proposed to be affected, special provisions will be required, *Rep.* v.

Furley, Mr. Richard Lee. (Analysis of his Evidence.)—Is acquainted with the Trent Navigation as a carrier by water from Hull to Nottingham and Shardlow, 1309, 1310 ——Owing to neglect of the channel, and to railway competition, the water traffic has diminished very much, and witness is the only carrier in a large way remaining, 1311–1313——The navigation authorities are bound by their Act to keep up thirty-six inches of water, but they frequently only keep up twenty inches; there is no one to compel them to fulfil their obligation, 1315-1317——They pay a satisfactory dividend, which is principally derived from local traffic which requires very little water, 1318–1328—— They keep up the banks of the river, 1363–1366.

The navigation is a check on the charges of the railway companies, 1331, 1358 —— It has a great advantage in carrying grain, as it saves terminal expenses by loading at the ship's side, and unloading at places of delivery in Nottingham and Newark, 1335 ——The impediments in the river are increasing, and boats have to go up half loaded, 1336, 1340.

Witness considers there should be more weirs, so as to keep up more water, 1351; but that they could be made so as not to increase floods, 1352, by which navigation is stopped, 1354; and that the river should be deepened, in which case the carriage of goods from Hull to Nottingham could be done for half the present rates, 1356.

G.

Gloucester. The Severn Navigation Commission has jurisdiction from Stourport to Gloucester; it has not been extended below, though it would be very advantageous, owing to Gloucester's fear of losing her sea-going traffic, *Williams* 1626.

See also *Severn.*

Government Department. Opinion that a Government department should have charge of the whole arterial drainage of the country, *Rawlinson* (suggesting the Local Government Board) 196; *Peel* (suggesting Inclosure Commissioners) 345; *Abernethy* 423, 424, 448; *Bartholomew* 1725, 1727; *Hawkins* (suggesting Inclosure Commissioners strengthened) 2711, 2717, 2743; *Percival* (suggesting with the Local Government Board, the Inclosure Commissioners or a new tribunal like the Railway Commission) 1018, 1021.

Recommendation of the Committee that there should be a Government department in charge of drainage, and that it should frame schemes for each case after inquiry and hearing objections and embody them in a Provisional Order, *Rep.* v.

Report, 1877—*continued.*

Grantham, Mr. Richard Boxall. (Analysis of his Evidence.)—Is a Civil Engineer who has had great experience in drainage works, 786-788——Assisted Sir H. Thring in drafting the Land Drainage Act, 1861, and has been appointed an inspector under that Act, 789, 790——The Land Drainage Act was simply for draining land, having no reference to floods, 793, 794——It has failed in its operation, for having no power to deal with main river, or do main arterial works, it has often increased floods outside the immediate district to which it has been applied, 795-800——Has no doubt that floods have been increased by improved agricultural drainage, 951-955, and also by neglect of navigations, 892, 893, and by encroachments of owners of weirs, owing to their being under no supervision, 894 *et seq.*

Has inspected the Rivers Parret, Carey, Brue, and Axe in Somersetshire, 801-804; and the Ouse District, 805 *et seq.*——The Somersetshire Drainage Bill now before Parliament is founded on his Report, 947——(This Bill has since been passed.)

On the Ouse, navigation has become almost entirely disused, 810; and the river is neglected by the navigation authorities, 893, 900 *et seq.*; but as there is still some traffic, which is a check on the rates charged by railway companies, 811, 812, and it is possible that some day steam might be used, 909-911, it would be desirable to maintain the navigation, and also the mills, which are now the principal interest on the river, 815, 816——This could probably be done, and facilities for irrigation afforded, and at the same time floods prevented, by enlarged overfall weirs, 810 *et seq.*——The river ought to be under some management for cleansing, regulating mills, &c., 812, 906, 907.

Witness approves of Thames Valley Drainage Act, 1871, and thinks it might advantageously be followed in many cases, 946——Owing to delay of Ordnance Department in preparing maps, nothing has yet been done under it, except dividing the area into districts, and paying off preliminary expenses of Act by an uniform acreage rate, 960, 976-988——Under that Act all lands within a five-foot line above the floods (and therefore rising parallel to the river level) are liable to be rated, 841, 845, 849——The limit of five feet was taken above the flood in February 1873, 851, 973.

Recommends that the whole country be divided into watersheds, 820; each catchment area being formed into one district, 832; with one body of Commissioners (possibly named in the Act), 841, 835——This body should have control over the whole arterial drainage of the watershed, 856 *et seq.*, and the sole management of the rivers; and there should be smaller district boards (on each of which there should be some of the Central Board Commissioners) for the execution and management of minor local works, 858, 859——There should be one uniform acreage rate extending over the whole taxable district for main works, 869, 924; and a second rate raised by the subsidiary board, according to the increased value of the land, 915, 924-930——This rate should be assessed by the Board, with appeal to quarter sessions, or to an arbitrator, 916 *et seq.*

The Public Health Act, 1875 (which gives great power to Corporations), might be extended to enable them to manage the rivers within their bounds, 870 *et seq.*, 881; but the towns would also have to be taxed in some way towards the general expenses of arterial drainage, 890.

Witness hands in (i) a list of applications for the formation of Commissions of Sewers and District Boards under the Land Drainage Act 1861, 792, and *App.* 281, and (ii) a classified list of the rivers of England and Wales, with particulars of their length and extent of their watersheds, 821, and *App.* 282–286.

H.

Hawkins, Mr. Robert. (Analysis of his Evidence.)—Is Town Clerk of Oxford, and Secretary to the Thames Valley Drainage Commissioners, 2648, 2649.

In 1870 the Thames Conservancy Board attempted to get rating powers over the riparian parishes on the Upper Thames, from Wittenham to the source; a large number of the landowners petitioned against this, and the Bill was thrown out. In 1871 the landowners, with the consent of the Government, obtained a Bill (the Thames Valley Drainage Act, 1871), constituting a government of the river, including the tributaries, from Wittenham to Cricklade, a distance of sixty miles, 2655——Commissioners (large owners of land, &c.), were appointed in the Bill, who were to decide what area their jurisdiction should extend over, and to divide this area into separate sub-districts, and arrange for their local self-government; these sub-districts to be independent of each other, and do what works they like in their own limits, but not so as to injure each other, or interfere with the arterial channel, 2650.

Up to this time nothing has been done, except the preparation of a survey; this survey (which witness thinks the Government ought to pay for, as it is part of the Ordnance

Report, 1877 —*continued.*

Hawkins, Mr. Robert. (Analysis of his Evidence)—*continued.*

Ordnance Survey of the country, 2707), and Parliamentary expenses have together cost more than 10,000 *l.*, which is levied over about 55,000 acres, lying within five feet of the flood-line, 2658, 2665.

This first rate for preliminary expenses is an equal acreage rate, irrespective of the value of the land, or of the benefit to be derived, 2667-2672——All subsequent rates for works are to be based on benefit, 2678; the Commissioners will have to assess the probable benefit to each field, taking all its circumstances into consideration, 2679——The owners will have to pay for the execution of new works (being allowed to charge their tenants with 5 per cent. interest on the outlay), and the tenants will pay the yearly charge for maintenance, 2682——The upper lands are not rated at all, 2681——The land is subject to two rates; to the general rate raised by the general board, and to the local rate raised by the smaller district boards for local works, 2691——Those local works are done by the smaller boards, but subject to the approval of the main board, lest one board should injure another, 2675, 2689——There is appeal against rates to quarter sessions, 2686, 2690.

The Commissioners have power to deal with land drainage, irrigation, and embanking of lands, and have power to buy up mills compulsorily, and make new cuts where required, 2660, 2676.

The Thames Conservancy Board has jurisdiction over the upper part of the river for purposes of navigation, concurrently with the Commissioners, and witness thinks it probable the two jurisdictions may clash, 2656-2662——The Thames Valley Commissioners are now applying to be the sole authorities, both for navigation and drainage, within their district, 2728——Witness anticipates that 100,000 *l.* will have to be spent on the Upper Thames in dredging, embanking, and widening, improving sluices, and doing away with some of the mills, 2695, 2696.

Recommends that the whole country should be mapped out into districts by a Government Department (the Inclosure Commissioners if strengthened, would do best), 2711, 2718——They would prepare the survey and obtain the Parliamentary powers, paying the expenses of both, 2708-2710——It would not be necessary for them to deal with all rivers, many small ones might be left to the landowners to manage for themselves; certain rivers, obviously requiring improvement and hampered by conflicting interests, might be chosen to begin upon, 2708, 2715-2724——Witness does not approve of the clause in the Irish Acts requiring the consent of two-thirds of the landowners; this would prevent anything being done where land is split up. The desirability of the formation of a Conservancy Board should be decided by a Government Inspector from the Inclosure Commissioners, 2755, 2765, 2780-2783.

Each river to be dealt with should be placed under one jurisdiction, if it is not very extensive, 2704——When the river is very long, there is a difficulty in getting Commissioners to attend meetings at a distance from home; in that case it would be better to divide the river up into main districts, 2705, 2737, 2751-2754——These again would be divided into small sub-districts, as on the Thames (except that towns might be included as to rates and representation), 2706——There is no reason why those districts should clash, as they would not overlap, and they would have no power to touch the main arterial channel, and in case of dispute as to injuries inflicted by one board on another, there would be an appeal to the Government Department in charge of the river system, 2725-2731——The height at which the river should stand should be laid down, 2738——The Inclosure Commissioners would regulate all the districts, and would see that no injury was done by upper districts beginning to send down more water before the lower ones were prepared, 2742.

Witness thinks that upland districts not subject to floods, should not be rated; if only floods are properly regulated they would be of great benefit to the lands flooded, 2747-2749——The rates should be according to benefit obtained by works; the height above the flood-level is not a sufficient test, but each case should be gone into separately, 2759-2761, 2763.

Recommends that there should be no appeal to quarter sessions as to rates; the liability of rates to this appeal diminishes their use as a security for borrowing, 2698, 2764; it would be better that an inspector should go down and hear objections, and settle the questions finally, 2699-2702——Witness found that in a case with which he was connected this worked admirably, 2703——There would be the less need for an appeal against the board as to rates or other questions, as it would be composed of the persons mainly interested, 2767-2770.

Hawkshaw, Sir John. (Analysis of his Evidence.)—Is a Civil Engineer, of great experience in drainage works in this country, and in Holland, 2786, 2787.

The rivers in this country are much worse managed than in Holland, 2792——Gives a description of the system in that country; districts are under bodies of commissioners, with very stringent powers to prevent interference with banks, and with extensive

Report, 1877—*continued.*

Hawkshaw, Sir John. (Analysis of his Evidence)—*continued.*

powers of rating and executing works——The whole subject of drainage and protection from floods is under Government supervision, 2853–2865.

Thinks that each river must be treated separately on its own merits, 2790, 2801–2803, and that each river must be placed under one authority, representing the landowners affected, 2793, 2794.

The initiative should rest with the proprietors of land, they will be sure to move if there is a real necessity for doing something, and they will be better judges of this than a board sitting in London, 2798.

It is no good passing a Bill simply constituting an authority to do something undefined at an unfixed cost. 2799——The first thing to be done is to find out in each particular case what requires to be done, and what the cost will be, and then if the persons interested think it worth while, they can go to Parliament with their scheme, and apply for a Bill, 2799, 2845–2849——The works would be clearly specified in the Bill, and any parties objecting would be heard before Committee, 2812, 2834, 2867–2872——The question has often been considered, but no cheaper and better method of legislation has ever been discovered than a Private Bill discussed before a Parliamentary Committee, 2813, 2820, 2840.

Referring to the case of Burton and Nottingham (see *Tarbotton* 1215, 1216, 1243), witness thinks it would answer every purpose if any local authority brought in a Private Bill defining what they wished to do, and if their works were likely to injure any other district, a Parliamentary Committee would be able to decide the question, protecting all interests affected, 2830–2844.

Provisional Orders might be advantageous in small cases, but in large cases, it would be better to have a separate Bill; the Parliamentary expense would be the same, as a Provisional Order dealing with any large scheme would be sure to be opposed, and have to be referred to a Select Committee, 2815–2819——A local Board could not simply be set up to determine differences, as such a Board could not be set up with unlimited powers, its own powers must in the first instance be defined by Parliament, and there would be contests then, 2814.

The Thames Valley Drainage Act set up a Board, without defining what it was to do, and in six years it has done nothing but prepare a survey——That Board has just consulted witness as to what they should do, and where they should begin——The Bill will not work, if there should be appeals about the rates, as there probably will be, as the Act lays down no rule or limit concerning them, 2822——The works to be done ought to have been defined in the Act, and then landowners would have known what sum they were liable for, 2823——Each district has power to do works for itself, but there is an appeal to the Conservators, and then to the Board of Trade, which in important matters will be had recourse to, causing great delay, 2824–2826——Witness thinks it probable the Thames Valley Board may again have to apply to Parliament to give them power to do whatever works they may decide upon, 2822.

Simultaneous and harmonious action will not be possible unless there is only one jurisdiction over the whole river, 2793, 2827; (either Commissioners or a Conservancy Board, 2875), taking charge of all the main and subsidiary drain channels, and all works on which the safety of the area depends, and raising rates both for execution and maintaining of works, 2827, 2828.

In Holland a State department supervises all drainage matters, but the interest on money expended is guaranteed by the country——Witness is of opinion that State control of works would not be a good thing in this country, 2860–2865.

Witness having inspected the Witham, came to the conclusion that the upland proprietors should be rated, as the improvements in their drainage have increased floods in the valleys, by sending down the rain-water more rapidly, 2794–2797——It might not be so absolutely in all cases, but this generally would be fair, 2810, 2811.

Does not consider railway embankments have generally increased floods, local authorities having generally forced railway companies to provide proper openings, but witness says that in certain cases they are an impediment to the running off of floods, 2804–2809.

In some cases Conservancy Boards might be entrusted with the prevention of pollution, but the circumstances of each case should be considered, 2801.

Health. Floods very injurious to health of neighbourhood, especially when the water is stagnant for any length of time, *Lloyd* 1463, 1483——At Lincoln, *Tweed* 1874.

Height of Land. Lands on the Don are rated according to the height of each field above the river. This has never been appealed against, *Brundell* 1124——Land should be rated in this manner; every field to contribute to expense of arterial drainage, the water from which has not a natural fall of five feet, *Mills* 2316–2320.

Report, 1877—*continued.*

Height of Land—continued.

Height of land an important element in rating, but the other circumstances of each field should be taken into consideration, *Hawkins* 2760 2763.

All land within five feet of highest flood is within the jurisdiction of Thames Valley Commission, *Grantham* 841——The whole taxable area should be divided for rating into two parts, the uplands that help cause the floods, and the lands flooded and benefited by works, *Denton* 2498, and be rated in the proportion of one to ten, *Tebbutt* 2013 2032, of one to twelve, *Coote* 622.

Conclusion of Committee that principle of rating all lands within a certain level equally, is unsatisfactory. Recommendation that whole watershed should be divided into lands above and lands below flood level with different proportion of taxation, but according to rateable value in each case, *Rep.* vi.

Henry VIII., Act of. First Act relating to Drainage.——See *Legislation, Present state of.*

See also *Rep.* iv.

Holland. Protection against floods is dealt with by various local bodies of Commissioners. They are elected by landowners under Statutes; they have power to rate and to take charge of everything connected with floods and drainage in their district. The State guarantees interest on money expended, and there is a Government department having superintendence over all embankments on which the safety of the country depends, *Hawkshaw* 2853-2863.

Hudson v. *Tabor.* Very important case in which it has been held that a frontage proprietor is under no common law obligation to maintain flood banks, *Macturk* 2118.

Humber. Too large to be dealt with by one board, as it is the estuary of several distinct rivers, *Bartholomew* 1752; *Macturk* 2137 *et seq.*; *Mills* 2338-2341.

The estuary should be under a body of representatives from the boards of all the constituent rivers, *Denton* 2494-2497.

Hundred Foot River. A cut (otherwise called the New Bedford River), made by Sir Cornelius Vermuyden from Denver Sluice to Earith in the Ouse Valley, to supplement the Old Bedford River; was intentionally made insufficiently wide to carry off the flood waters, and embankments were placed about half-a-mile from the cut, allowing this breadth of meadow for the flood to pass harmlessly over. This answered very well till the owners of these wash-lands obtained power (there being no one to represent the owners above) to raise a bank to save themselves from flood, *Peel* 307; *Abernethy* 400; *Tebbutt* 2007.

See also *Bedford Rivers.* *Vermuyden.* *Washlands.*

I.

Inclosure Commissioners. Appoint Commissioners of Sewers and form Drainage District Boards under Land Drainage Act of 1861, *Ridley* 2.

Recommended as the proper authority to superintend arterial drainage of the country, *Peel* 345; as they already have so much experience with drainage, and have made themselves a very popular department by their readiness to assist, *Hawkins* 2711.

Ireland. Drainage works are governed by the Acts of 1842 and 1863 under the control of the Public Works Commissioners, *Roberts* 649 *et seq.*——Under the Act of 1843, 266,736 acres were drained at an expense of 2,390,612 *l.*, giving an increase in value of 74,502 *l.* a year, *ib.* 655, 656——Of that expense 152,180 *l.* was charged to counties for improvements in bridges, roads, &c.; 1,337,868 *l.* was remitted by Government (who found all the money in the first instance), and 900,563 *l.* was charged on land improved, *ib.* 666, 696——Under the Act of 1863, twenty-two districts have been drained, an extent of 51,064 acres, at an expense of 153,101 *l.* (all but a trifle charged on land), and giving an increase in value of 9,563 *l.* a year, *ib.* 703.

The Act has been satisfactory, but only applies to small arbitrarily settled districts, *ib.* 707, 727, 747, 756, *Denton* 2757——The consent of two-thirds, afterwards one-half of the owners being required, *Roberts* 738, 740——There ought to be a general system, each watershed being the unit. The difficulty would be the assessment of rates; each district should have the benefit of its natural facilities for drainage and pay less proportionately, *ib.* 754, 764, 765.

See also *Famine (Irish).* *Legislation* (2. *Ireland*). *Remedies Suggested.* *Roberts.* *Shannon.*

Report, 1877—*continued.*

Irrigation. River drainage boards (or, perhaps, sub-district boards) should have power to store water for irrigation, *Ridley* 129–131; to be paid for by occupier using it, *Grantham* 878.

It will be necessary to take measures for storing water for irrigation, but this must be kept apart from dealing with floods, to which it can make no appreciable difference, *Abernethy* 585–587; *Coote* 625, 644; must be kept apart from drainage, *Percival* 1022.

Weirs must be preserved to hold up water for irrigation in summer, *Abernethy* 475, 542, 553; *Coote* 645; *Grantham* 812, 933.

By making use of side streams as a flood channel (for instance, near Oxford), and keeping them clear, there would be a useful storage of water, *Denton* 2435.

Irrigation must be provided for those lands deprived of beneficial floods by drainage works, *Ridley* 144.

Isel River. This river, a tributary of the Ouse, was formerly under a navigation commission, and was navigated from the sea; the navigation has been abolished owing to the competition of railways, and the river allowed to get silted up, and there is, at present, no supervision over it, *Peel* 296 *et seq.*——Instance of encroachment by a miller, *ib.* 354——Certain owners, in default of any authority to deal with the river, have embanked their own lands (at a very small cost, *ib.* 392), and they have now no floods, but have, no doubt, increased the floods on their neighbours' lands, *ib.* 298.

L.

Land Drainage Act, 1861. See *Legislation.*

Landowners. Should not be allowed to deal with river bank in any way without permission of River Board, *Rawlinson* 290–292; within a certain level above river, *Denton* 2514–2527——Should not be allowed to deal with washlands without leave, *Abernethy* 564–578——Control of river banks should be entirely taken out of hands of owners by conservancy authority, *Mills* 2349–2356.

Recommendation of Committee that the extent of interference with proprietary rights of riparian owners should be defined in Provisional Order, *Rep.* v, vi.

Lee River. The Lee Conservancy Board was formed after inquiry by the River Pollution Commissioners, to prevent pollution and to maintain navigation, *Corble* 1403—— Its income is derived from tolls and 1,000 *l.* a year paid by the water companies drawing water from the river, to be spent in the prevention of pollution, *ib.* 1409.

Not subject to serious floods, *Child* 1369–1378——The non-navigable upper streams are subject to floods, and some small improvements could be made, but there is no demand for them, *ib.* 1383–1393——The Navigation Company spend a good deal in dredging the river, and it is in a satisfactory state, *ib.* 1378——Improved weirs have been substituted for the old ones, and the floods are carried down very satisfactorily, *ib.* 1396——Weirs of improved construction would be a great relief on most rivers, *ib.* 1399, 1400.

Prevention of pollution will be easier to carry out in the future, as the Pollution of Rivers Act, 1876, gives power to board to take proceedings before a county court, *Corble* 1410.

The Lee an instance of injury of jurisdiction of river boards only extending a short distance from stream; Stevenage, a rising village, is now turning its sewage into a tributary, whence it will flow into Lee, and this cannot be prevented, *Denton* 2499.

Legislation: Present State of the Law respecting Floods and their Prevention:

1. *England and Wales:*

Act of 23 Henry VIII., first Statute on the subject. Under it Commissions of Sewers were appointed by the Crown, *Ridley* 4 (List of Commissioners still existing under that Act, *App.* 280), with very extensive powers of dealing with rivers, *ib.* 17, and of rating, *ib.* 19——This Act has practically failed, as courts of law decided that it only applied to navigable rivers and sewers communicating with the sea, above the point where the tide ebbs and flows, and that no works but those described in the Commission could be rated for, *Peel* 335——There have been two applications for the appointment of Commissions under this Act lately, at Lincoln and the Tower Hamlets, *ib.* 333.

There have been various amending Acts passed, amongst others, in the reign of Elizabeth, Anne, and 3 & 4 William IV. (which last gives power to assess different rates on separate districts, and establishes principle of rating according to benefit), *Ridley* 17, 25, and in 1833, *Peel* 335.

In

Report, 1877—*continued.*

Legislation: Present State of the Law respecting Floods, &c.—cont^d.

1. *England and Wales*—continued.

In 1861 the Land Drainage Act was passed which now governs Commissions of Sewers and Drainage District Boards, *Peel* 335——It is permissive, and only applies to agricultural not arterial drainage, *Ridley* 5; *Grantham* 797, and requires consents of large proportion of owners, to which its failure is principally due, *Peel* 335, 337, 339; *Abernethy* 418 *et seq.*; *Lloyd* 1457; *Hawkins* 2755, 2780——The petition for the Act to be put in force must be signed by the proprietors of one-tenth of the land affected, then there is inspection by an officer of the Inclosure Commission, and if one-third of the proprietors dissent petition is dismissed. There are further inspections and consents necessary before the final Provisional Order can be issued forming districts (Commissions of Sewers and District Drainage Boards differ only in mode of appointment), *Peel* 339; *Grantham* 795——The rating is according to benefit, and there is an appeal to quarter sessions, *Peel* 339, 340——There is no power under this Act to rate towns, however much they may be benefited, *ib.* 341; *Coote* 636.

There is a clause (58) in the Act against pollution of rivers, but it has never yet been put in action, *Rawlinson* 292.

List handed in of Commissions of Sewers and District Drainage Boards formed under Act of 1861, *Ridley* 4; *App.* 279; and of applications for same, with particulars of areas and results of application, *Grantham* 792; *App.* 281.

The powers under older Acts are very large, but are too vague and general, and are limited by the provisions of 2,000 to 3,000 private Acts, more or less affecting the question, *Ridley* 36, 49, 75, 128; and the Act of 1861 is cumbrous in its machinery, and expensive from the number of consents; can never be put in operation over any extended area, *Coote* 637; *Grantham* 796, 797-798.

Summary of legislation on the subject; Committee reports that there is a general opinion that existing legislation has not been successful, *Rep.* iv.

See also *Thames Valley Drainage Act.* *Remedies Suggested* (*Legislation*).

2. *Ireland:*

In 1842 the first Act (amended in 1845 and 1846) relating to drainage in Ireland was passed, *Roberts* 649——Under it any one proprietor, *ib.* 734, may present a petition to Public Works Commissioners; they send down an engineer (not necessarily an official, *ib.* 736), who reports on area to be included, and works and expense necessary; if two-thirds (afterwards altered to one-half) of proprietors agree, the Commissioners carried out the works, finding the money, to be repaid in twenty-five years, and issued an award fixing the amount to be paid by each section of land, according to the probable benefit to be derived from works, *ib.* 651-654——Considerable works were executed under this Act; a great many of them to provide work during the Irish famine, regardless of their being remunerative, *ib.* 655-666, 692——Between 1853 and 1863 no new works were began, *ib.* 668-670, 687.

In 1863 a new General Act was passed (principally amending procedure) enabling districts to execute works (approved by Works Commissioners) themselves, borrowing the money at 4 per cent., *ib.* 671, 684, 706.

That Act has worked very well, as far as it goes, *ib.* 703——But the districts have been formed piecemeal, and by carrying more water to the rivers floods have been sometimes increased and other districts injured, *ib.* 720, 727, 751.

See also *Remedies suggested.* *Famine* (*Irish*). *Ireland.*

Lewis, Sir George Cornewall. A Bill dealing stringently with the whole question of arterial drainage was drafted by the Inclosure Commissioners in 1861, under the direction of Sir G. C. Lewis, the Home Secretary, *Ridley* 145-147——It was thought impossible to pass it into law at that time, and the Land Drainage Act, 1861, was substituted as the next most satisfactory measure, *Peel* 385.

Liability to repair "Ratione Tenuræ." See "*Ratione Tenuræ.*"

Lincoln. See *Witham.*

Lloyd, Mr. John. (Analysis of his Evidence.)—Lives in Herefordshire, and is well acquainted with the Wye District, 1434-1436——The Wye is under various Acts; navigation trustees have long existed, but were practically superseded by a towing-path company established in 1805; but that company dissolved itself on the opening of the railway from Hereford to Gloucester, 1437-1447——The navigation trustees spent a good deal on the river at one time, but they only had power to raise rates for five years, from 1695 to 1700, and now the river is under no real authority at all, 1448, 1454.

Navigation on the Wye has ceased, but being a navigable river it cannot be touched

Lloyd, Mr. John. (Analysis of his Evidence)—*continued.*

under the Act of 1861; 1445, 1446, 1459, 1563——A few small districts near the Wye have been formed under that Act, but owing to the difficulty of getting consents, that Act does not meet the necessities of the case, 1545–1548.

There are floods on the Wye, but they do little damage, and could not altogether be stopped, 1452, 1457, 1513——On the Lug (a tributary of the Wye), floods do great damage, and here steps should be taken to prevent them, 1459, 1462——The railway is much interfered with by floods, 1463; and on the other hand it retards the flow of flood-water by its embankments, 1538, 1559–1561——There are some weirs on the Lug that aggravate floods, 1470–1474.

Witness thinks that the improvement of the flow of flood-water from the Lug would not increase the floods on the Wye, as floods do not occur on both rivers at the same time, 1549, 1551, and the banks of the Wye at the junction of the Lug are nearly twenty feet high, 1553.

When the floods do not last long, they do good in some cases to the hay crops, and this prevents the farmers taking any steps to mitigate them, lest they should altogether lose the benefit the land sometimes gets from them, 1475, 1476, 1483, 1565; but on the whole, the county is anxious to see the drainage of the valley improved, 1570.

Recommends the appointment of a Conservancy Board for area drained by the whole river, 1461, 1494 (possibly for the Wye and Lug districts combined, 1497), composed of representatives elected according to rateable value, or formed from boards of guardians, courts of quarter sessions, and authorities of towns, 1498, 1575——This Board should have power to maintain the navigation when advisable, 1499; to dredge the river, 1523; to buy up and remove the mills, 1509; and to carry out the Pollution of Rivers Act, 1515, 1518.

The Board should raise a small acreage rate on the whole district drained by the river; witness thinks that in the case of the Wye, it need not be above a penny an acre, 1520–1527, 1576–1578.

Local Authorities. Sometimes difficult to put them in motion against the pollution of streams, as they frequently themselves create it, *Bartholomew* 1702.

Locks. Do not aggravate severe floods, though they may do harm by waterlogging districts immediately above them, *Rawlinson* 173 *et seq.*, 198–201——Their removal on the Ivel has facilitated the flow of flood-water, *Peel* 357.

Should be kept up to preserve navigation, as this is a check on the charges of railways, *Abernethy* 810, 812; *Tarbotton* 1235, 1297, 1302; *Furley* 1329, 1358; *Taunton* 2216; *Lowndes* 2548, 2561; and steam may, perhaps, be used for navigation in the future, *Abernethy* 900–911.

See also *Floods* (*Causes of Increase of*). *Mills. Navigation. Weirs.*

London. Rainwater from the upper river does not raise the level of the Thames below locks more than three or four feet, *Rawlinson* 203——Injurious flood in London is caused by concurrence of river floods, a high springtide and an east wind, *ib.* 203.

The floods in London are easily preventible by embanking, *ib.* 211–215——They have not been increased by the Embankments, but were by the removal of old London Bridge, *ib.* 216, 217, 233.

See also *Thames.*

Lowndes, Mr. William Layton. (Analysis of his Evidence.)—Is Deputy Chairman of Quarter Sessions for Shropshire, 2528, and a trustee of the River Severn towing-path (twenty-four miles in length) from Bewdley to Colebrook Dale, 2529.

These trustees are the only authority over that part of the river; they take tolls, and keep the path in repair, and dredge the river, 2532, 2541——The navigation is diminishing from railway competition, and the trustees have been considering whether they should not apply to Parliament to be dissolved, as they have no funds, and last year only took 130 *l.* in tolls against 1,200 *l.* formerly, 2542–2547——The upper Severn would then cease to be navigable, 2563.

Witness thinks the whole river should be placed under one Conservancy Board, 2551, 2557; and that they might (amongst other duties) keep up the towing-path, rating the surrounding district, for though the navigation does not pay its expenses, it is a benefit to the neighbourhood, as being a check on the charges of the railway, and as contributing to the prosperity of the district, as there is still some traffic, 2548, 2559.

Lug, River. A tributary of the Wye, subject to very serious floods, *Lloyd* 1459, 1463——These are aggravated by the weirs, which should be removed, *ib.* 1470, 1474, 1509; but the river is, to a certain extent, unavoidably subject to floods, as it drains such a large extent of mountain country, *ib.* 1475, 1539 *et seq.*

The

Report, 1877—*continued*.

Lug, River—continued.

The river should be included under one Conservancy Board with the Wye, *Lloyd* 1496, 1497; with power to raise a rate over the whole catchment area, *ib.* 1525 *et seq.*; to buy up mills, *ib.* 1474; to dredge the bed, *ib.* 1523, and to attend to the purity of the water, *ib.* 1516.

See also *Wye, River.*

M.

Macturk, Mr. George Gladstone. (Analysis of his Evidence.)—Lives in East Yorkshire, and is a Trustee of the Market Weighton Drainage and Navigation, 2058, 2059, which runs from Market Weighton to the Humber, and which includes besides above forty miles of lateral drains, 2075–2077——The jurisdiction was formed by Act in 1772, and draws rates from about 20,000 acres in different proportions, which were fixed when the Act was first set in motion, 2105-2116——The scheme was for navigation as well as drainage, and as the land lies very low the obligation to keep up six feet of water prevents the proper draining of the land, 2082–2089——The Board has no power to do new works or even cut new drains, but only to maintain the works specified in the Act, 2098–2102——New works are required that would cost about 6,000 *l.*, 2103 ——The Board consists of all the landowners of position in the district, and is self-elected, 2090-2096.

Neither a Commission of Sewers or a Drainage Board could be appointed under the present state of the law for this district, as it is already under drainage trustees under a Private Act, 2118; and witness's district was about to seek for a Private Act, giving them wider powers, but delayed on the appointment of this Committee, hoping it would result in improved legislation, 2117.

In East Yorkshire there are about 100 miles of raised banks against the tide, and there is no authority over them, and in the case of Hudson *v.* Tabor, it has been held that the frontage proprietor is not liable to maintain flood banks, and there is nobody to do it, 2118.

The existing trustees should be invested with the powers of a Commission of Sewers 2118; or a board with larger powers over a larger area should be constituted; each river should be under one board by itself, 2137-2141——The Humber is an estuary including many rivers, and its catchment area would be too large for one board, 2142.

Witness thinks that proprietors of high lands ought not be rated to valley drainage works, unless by any new drains, &c., they should send down more water, 2122, 2123.

Witness has, on his own initiative, executed works for the supply of pure water to a village of 800 inhabitants, carrying a pipe from a spring of his own for three miles along a road, by consent of the surveyor; he is repaid by a fixed water rent entirely by private agreement, and he finds cottagers, not his own tenants, very willing to agree to this, 2143–2169.

Malmesbury, The Right Hon. The Earl of. (Analysis of his Evidence.)—Is well acquainted with the Hampshire Avon, the Stour, and the Heron, and has property on those rivers, 2577–2580——The mills are the only obstructions on those rivers that cause floods, 2581; the floods are no worse than they used to be, 2608; and in many cases add very much to the value of the land, 2582; and witness would be very averse to their being stopped, if it were possible, 2583, 2610–2612——The millers are looked after by the holders of land below them; there is a high-water line that they are obliged to keep the water at; and they behave very fairly about opening their sluices, 2584–2589, 2600; there is nobody having authority on the river, and each landowner keeps up his own banks, 2590, 2626–2628, 2636——Witness thinks there is no need of a Conservancy Board for those rivers, 2629, 2635, 2645——He confines his evidence to these three rivers with which he is acquainted, 2638, but generally disapproves of interference with private rights, as advocated by preceding witnesses, 2617, 2638–2640.

Market Weighton Navigation. See *Macturk.*

Middle Level Fen District. A district near the Ouse, comprising about 130,000 acres, *Tebbutt* 1987–1989——It is managed by a commission chosen from the ratepayers under various private Acts of Parliament, *ib.* 1991——Nearly 600,000 *l.* has been spent in the last thirty years, and the drainage is now nearly perfect, *ib.* 2002——It is paid for by an equal acreage rate, which amounts to about 6 *s.* an acre, *ib.* 1996, 2004.

From success of this drainage district witness argues that all drainage should be left to voluntary local effort after an Act of Parliament has been passed setting up a Board

Report, 1877—*continued.*

Middle Level Fen District—continued.

of Conservators for each river, against which any owner injured by floods should have power of indictment, *Coote* 617, 618, 622, 633.

Mills, Mr. Robert William Fenwick. (Analysis of his Evidence.)—Is a Land Agent in Yorkshire, well acquainted with the River Derwent, 2245–2249——An Act was passed in 1800 forming a drainage district over about ten miles of the upper part of this river between Muston and Yedingham, 2254; a board of directors was appointed and still exists, 2257; they have improved the old water-course, made some new cuts and embanked the river; they rate according to the height the land may be above a fixed datum point, 2271; this was fixed when the Act commenced, and all rates (varying according to the requirements of each year) are raised on that scale, 2272–2281——The whole watershed is included in the rating area, 2282——This part of the river is now quite free from floods, 2285.

Below, for about forty miles, the rest of the Derwent is subject to floods, that do much damage, 2250; and last winter's flood was the highest on record, 2253——The floods are caused by the water coming down so rapidly from the moorlands, 2298——Improved drainage has not affected floods in this district as there is very little drained land, 2299; but witness thinks that in many cases it has aggravated floods, 2357–2362——Some proprietors have embanked their lands and have saved themselves, but increased their neighbours' floods, 2304–2309.

Recommends that the whole river be placed under one Conservancy Board, 2312, 2377——There is no objection to the upper district being included, though there is no necessity for it, as it is properly drained, and no new works below could do it injury, 2325–2330——It would be too large an affair to include with the Derwent the whole River Ouse, under one Board, 2340——The Board should make embankments and clear away obstructions, 2368; place sluices in the weirs that cannot be removed except at a great cost, 2369–2373, and maintain the outlet, 2349——Proprietors should be prevented making banks lest they injure others, and the Board should undertake the whole management of them; the existing banks would probably require widening very much, 2351–2356.

Rates should not be allowed to exceed 3 *s.* an acre, 2314; and should be imposed according to benefit received; lands on various levels should pay according to their height above a datum point, say the summer level of the river; no lands should be taxed that already have an outfall of five feet; that is to say, that can now be underdrained five feet in depth without any improvement in the outfall, 2313–2320, 2343–2346.

It would be advantageous if landowners could, without great expense, obtain an Act enabling them to drain, but witness also approves of the passing of a general Act on the subject, 2364.

Mills. Mills and their usually accompanying weirs aggravate the injury done by floods, especially as the weirs are often of bad construction and without flood gates *Peel* 319; *Grantham* 810; *Brundell* 1170; *Tarbotton* 1232, 1283-1287; *Child* 1397–1400; *Lloyd* 1470, 1509; *Williams* 1662; *Mills* 2370–2373 —— Millers often encroach and raise the sills of their weirs, *Rawlinson* 280; *Peel* 319, 354; *Grantham* 894.

Do not increase severe floods, *Rawlinson* 173–179, 199 *et seq*——But often do much harm by waterlogging land immediately above them, *ib.* 198; *Abernethy* 495——They are useful as holding up water and preventing drought in summer, *Rawlinson* 202; *Abernethy* 475, 541, 553; *Coote* 645; *Grantham* 812.

There should be some supervision to regulate the timely opening of sluices on first threat of flood, *Peel* 319; *Grantham* 906.

See also *Locks.* *Remedies suggested* (*Works*). *Weirs.*

Recommendation of Committee that whilst it may be necessary in some cases to interfere with rights of mills, great caution should be exercised, as under proper regulation and when of proper construction they need not be prejudicial to the general interests, *Rep.* v.

N.

Navigations. Rights of navigations interfere with the operations of the General Acts relating to drainage, *Ridley* 37——There should be some authority with power to control these rights and to authorise their discontinuance when useless or harmful, *ib.* 49, 79, 84.

Neglect of navigation authorities, owing to decrease of traffic, to maintain rivers one of the

Report, 1877—*continued.*

Navigations—continued.

the principal causes of flood, *Peel* 319, 354; *Abernethy* 399; *Coote* 602; *Grantham* 810, 893 *et seq*; *Furley* 1314; *Tebbutt* 2011; *Taunton* 2216.

Exercise a check on the charges of railway companies, *Grantham* 812; *Tarbotton* 1234–1236; *Furley* 1331, 1358–1360——Railways benefited by the destruction of navigations for drainage purposes might contribute to cost of drainage works, *ib.* 1268, 1269, (but see *ib.* 1296–1301)——The maintenance of navigations is beneficial to the country, *Macturk* 2089.

If navigation on the Trent were properly kept up, charges between Hull and Nottingham could be diminished nearly one-half, *Furley* 1356; but the river is allowed to silt up, *ib.* 1314, 1337, as the Trent Navigation Company (which is legally obliged to keep the river a certain depth) pays a satisfactory dividend from small local traffic which is is indifferent to depth of water, *ib.* 1319–1322.

Care of navigations would in some cases prevent floods; witness believes that on the upper Thames, if the through navigation were completed to Gloucester, it would pay, and the Thames Conservancy Board would then spend money on it in keeping it in proper order, *Taunton* 2216-2229——Navigation should be kept up by the Conservancy authority (if the tolls were insufficient, by a rate), as they are a check on railway charges, and contribute to the prosperity of their district, *Lowndes* 2548 2551, 2557 *et seq.*

Keeping up the navigation on the Witham materially increases floods, *Tweed* 1947; it is now useless as a check on the railways, as the Great Northern Railway runs by its side, and that company owns the tolls, *ib.* 1935 *et seq.*; on the Market Weighton Canal, *Macturk* 2085-2089.

Neglect. Great increase in severity of and injury caused by floods is considerably owing to neglect of proper care of streams (partly owing to disuse of navigation), so that they cannot carry off increased quantity of water now poured into them by agricultural drainage, *Ridley* 44; *Rawlinson* 246; *Peel* 302, 319, 376; *Abernethy* 399, 405; *Coote* 595, 596; *Grantham* 810, 893–901; *Tarbotton* 1251; *Furley* 1314, 1337; *Bartholomew* 1708; *Tebbutt* 2011.

Conclusion of Committee that neglect of streams is a serious cause of floods, and that if channels and outfalls were properly cared for, rain water could be carried off by them time to prevent serious damage by floods, *Rep.* iii.

Nene, River. Is under a great number of different authorities, *Abernethy* 427 *et seq.*, and owing to this the works that have been undertaken under the Private Act of 1852 have failed, though they have left a heavy rate on the lands immediately near the river, *ib.* 458, 474.

Till 1852 the Nene was under private Navigation Acts; no one was under obligation to maintain the stream, but the owners of the navigation. In 1852 the river was divided (by Act) into districts, and Commissioners appointed to improve navigation, and to drain the lands liable to flood. The probable improvement was calculated, and rates varying according to the benefit to be derived, imposed; 150,000 *l.* was raised and spent. The works were only done partially, and have now become almost entirely ineffective, and yet the land remains charged with this debt, some as much as 17 *s.* an acre, *Percival* 997–1002

The great difficulty in any arrangement is the number of conflicting interests, *ib.* 1005——Witness recommends that the whole area of the drainage bed of the river should be under one small board, each conflicting interest being represented, *ib.* 1009, 1054; that the representative of no one interest should be outvoted by the rest, but in case they cannot all agree there should be an appeal to a Government Department. This small board should deal with all questions affecting the whole river, and the present various existing local Boards and Committees should have the management of their own districts, and raise their own taxation, *ib.* 1013, 1026.

The Nene is sufficiently important to be a district by itself, apart from the Ouse, *ib.* 1027–1029.

The rating should be an equal acreage rate over the whole district drained for main and outfall works, and each sub-district should pay for its own local works on the same basis, *ib.* 1023, 1026.

See also *Percival.*

Nottingham. Instances of floods at Nottingham, *Tarbotton* 1198–1208——The corporation of Nottingham have authority on a very small portion of the River Trent; within their district they have done all they could to mitigate floods; they have removed the Old Trent Bridge and replaced it with another, and this has made a difference of eighteen inches in the water level; they have dredged the river bed and improved its banks and now require (under Parliamentary powers) that all land should be raised to a

Report, 1877—*continued.*

Nottingham—continued.

certain level before being built upon, *Tarbotton* 1209–1214——Much more could be done by an authority having wider jurisdiction, *ib.* 1215 *et seq.*

The town should be rated to general drainage of river as well as for works in its own limits, *ib.* 1224.

See also *Tarbotton.* *Trent.*

O.

Ouse, River. Bad state of the Ouse owing to neglect, *Peel* 300; *Coote* 592——Witness refers to Mr. Abernethy's Report on the Ouse, *Peel* 306——Cause of floods on the Ouse are, defective state of the outlets, deterioration of river bed by shoals and weeds, which there is now no authority to remove, and want of subsidiary channels for carrying off flood-waters, *Abernethy* 398; *Coote* 594 *et seq.*

Description of works on the Ouse by Sir Cornelius Vermuyden, *Peel* 307; *Abernethy* 400——Witness appointed by a voluntary committee to investigate floods between Huntingdon and Earith, but found that improvement of that portion of the river would only injure parts below and above, *Abernethy* 407 *et seq.*; *Coote* 606; washlands along the Ouse over which floods were intended to flow have been banked across, *ib.* 400, and planted with osiers, *ib.* 565; washlands ought to be kept clear, *ib.* 571——Overfall weirs ought to be enlarged, *Grantham* 810, 907, as it would not be advisable to do away with the navigation, *ib.* 810, and as the country would suffer from drought if the weirs were removed altogether, *ib.* 812; *Abernethy* 542——Witness recommends that there should be one board elected by those rated to manage the whole river; he thinks that they would deal satisfactorily with the subject without Government interference if they had compulsory powers of rating, *Coote* 614 *et seq.*

See also *Abernethy.* *Coote.* *Middle Level Fen District.* *Vermuyden.*

Outfall of Rivers. River boards should have power to keep the outfall of rivers clear at the expense of the whole drainage area, and to execute works on the foreshore between high and low water, *Ridley* 59, 137, 138; *Percival* 1026.

Outfalls generally clear enough for drainage purposes; if their enlargement is necessary it must be for navigation, *Rawlinson* 241.

Oxford. If side streams were properly kept clear round Oxford they would take off the flood water, and this would be a more satisfactory remedy than lowering the level of the river, which, especially in summer, would destroy its beauty; a valuable storage too of water would be afforded, *Denton* 2434, 2435.

See also *Thames.*

P.

Parliament, Act of, See *Legislation. Private Acts. Provisional Order. Remedies Suggested* (*Legislation*).

Peel, Mr. Arthur Wellesley, M.P. (Analysis of his Evidence.)—Witness has brought the subject of floods before the House of Commons, and inquired into it for that purpose, 309; is specially familiar with the Ivel (a tributary of the Ouse), near which he lives, 296.

The Ivel has suffered from fifteen floods within as many months; it was formerly under a Navigation Trust, and used to be navigated from the sea; owing to railway competition the navigation ceased, and the Commissioners having no funds, had themselves abolished by Private Act of Parliament, 297——A few riparian owners tried to get some jurisdiction established over the river; but failing in that, have now embanked their lands themselves on a short portion of the river; they have now no floods, but have thrown more water on their neighbours, who would not combine with them, 298, 353–388——The Ivel is now in a very bad state; is diminished one-half in width and depth, and is gradually being silted up above the level of the surrounding country, 299–354.

The River Ouse is in a deplorable condition; it is under no general supervision, 300–308——Mr. Abernethy reported upon a portion of it, but found the evil too great to be dealt with locally, 306——Describes state of Old and New Bedford Rivers; the inhabitants of Earith are much injured by increased flow of water from above, owing to improved drainage; and they argue that all the cost of works should not fall upon them, but should be shared by the upper district, 307.

In Somersetshire floods this year covered at one time 100,000 acres. The inhabitants are now applying for a private Act of Parliament, 309, as the Land Drainage Act, 1861, is insufficient to meet the case, 310, on account of the number of consents required

Report 1877—*continued.*

Peel, Mr. Arthur Wellesley, M.P. (Analysis of his Evidence)—*continued.*

required before anything can be done, 335, 339, and the difficulty of assessing rates, 334–338——Witness gives provisions of that Act, 335, 339——Under it towns cannot be rated, 341, 342.

On the Trent there are heavy floods, which are caused high up the river above the places injured; there ought to be some one authority to deal with the whole river, 311.

Causes of floods are, in the opinion of witness:—(1.) The increase of subsoil drainage throughout the country, which causes rain water to be brought down sooner into the rivers, and brings with it a great quantity of soil, 313, 314; better surface drainage has also produced the same effect, 315; (2.) The neglect of the rivers owing to the absence of any supervision, and this has been much increased since navigations have been superseded by railways, or for other reasons have been neglected, 319; floods are also a great deal aggravated by (3) millers not being compelled to open their sluice gates when floods are imminent, of which there is generally warning, and (4) by the insufficient size of bridges, 319–326——The removal of weirs on the Ivel decidedly facilitates the flow of water, 355–359.

The great difficulties in dealing with the subject are:—(*a*) What is to be the area of jurisdiction, and (*b*) What is to be the method of taxation, 331–349.

There should be one superintending body for each water basin, with local bodies representing sections of the area (entirely under the control of the main Board, 374, 375); the central body should deal with questions affecting the whole river, and local bodies with purely local matters, 331–351——They should have power to override provisions of Local Acts that interfere with establishment of main system, 352–362.

The Act of 1861 is impracticable, from the number of consents required, and from its not rating towns, 334; but the principle of it should be carried out. On the application of a certain number of inhabitants, 361, a Government department should send down an inspector, who should decide what works were to be done, what area was to be taxed, what the towns affected were to contribute, and how they were to be represented on the Board, and the proportion of taxation to be borne by districts at different levels above the outfall——A Provisional Order should then be framed, 343, 347, 348, 382; and as it must be confirmed by Act, there would be a full appeal before the Committees of either House of Parliament, 347.

A general Act should be passed, containing general provisions (like the Lands Clauses Acts, &c.), which should attach to the individual Provisional Order, 343; the subject is much too complicated to be dealt with by an Act which would apply directly to each river, 331.

If districts preferred it, they should be allowed to proceed voluntarily under the Land Drainage Act (where it would answer), but in case of neglect, Conservancy Boards should be created compulsorily, 331.

Upper proprietors might fairly be rated, as they contribute to the water that has to be got rid of. The area of taxation need not necessarily be the same as the area of jurisdiction; the general principle for contribution always being that taxation should be proportional to the benefit received from the works; 349, 350, 379, 380.

Percival, Mr. Andrew. (Analysis of his Evidence.)—Is a Solicitor at Peterborough, and knows well the whole River Nene, and has been employed professionally about it, 989–996.

River Nene, 997–1002——Till 1852 the river was under private Navigation Acts; there was no power to tax lands, and the river was cared for (as far as it was cared for at all) by the owners of the navigation. In 1852 an Act was passed which divided the river from Northampton to Wisbeach into districts, and gave authority to Commissioners to improve the navigation and to drain lands; in order to borrow money on these rates, the probable improvement was calculated, and lands were rated according to their proportion of probable benefit; 150,000 *l.* was spent, the works were not completed, and the sum remains as a permanent charge on the land (some land is rated as much as 17 *s.* an acre), 1057–1062.

In 1862 a new scheme was proposed and a Bill introduced, which was fought for six weeks before Committee. The different interests on the river are bitterly opposed. The lower proprietors are opposed to the channel from the sea being deepened lest the tide should come up and the water that they want fresh be brackish, 1005, 1050, 1051——The floods are getting worse, 1003, and the river is under a great number of different and conflicting authorities, who neglect it, and it silts up. The floods are also increased by improved land drainage, 1052.

Recommends that the whole river should be under the management of a small Board, representing the different interests, 1009, 1054; in case the conflicting interests cannot agree there ought to be an appeal to a Government department, so that the

Report, 1877—*continued.*

Percival, Mr. Andrew. (Analysis of his Evidence)—*continued.*

representative of no one interest shall be out-voted by the others, 1018, 1021, 1033——The Government department would act by Provisional Order, so that ultimately there would be an appeal to Parliament; the General River Board would deal with questions affecting the whole river and the outfall, and assess the taxation for these purposes, 1017, 1018; and the Local Boards (possibly the existing authorities) would deal with their own portion of the river, raising taxation themselves, 1013, 1026——There should be a right of appeal to a Government Inspector, and the difference would be settled by a Provisional Order, 1021.

Thinks that all England ought to be divided into drainage districts, 1014; and that the Nene Valley is sufficiently large to be a district by itself apart from the Ouse, 1015, 1016, 1027–1029.

Witness believes it to be impossible to rate lands in proportion to the benefit derived individually by them, but thinks that rating should be by districts; the area deriving benefit from works should be settled, and all land within such area taxed equally, 1023.

Peterborough. See *Nene.*

Pollution. Floods very much increased by pollution by solid substances raising the beds of streams, *Rawlinson* 165, 166; *Brundell* 1068 *et seq.*——Floods now do more harm from being charged with chemical refuse, *ib.* 1158 *et seq.*——Besides pollution by manufacturing substances, road detritus from large towns has raised the bed of the rivers in many places, *Denton* 2427——River water was formerly very good for drinking, but is now very dangerous, *ib.* 2490–2492.

By a clause in the Pollution of Rivers Act, 1876, it is made an offence to throw solid matter into a river, but that Act has not yet come into operation, *Rawlinson* 282——There is also a clause to the same effect in the Land Drainage Act, 1861, but no action has ever been taken under it, *ib.* 292; very valuable provision in Pollution Act of 1876, allows conservancy authorities to take proceedings before county courts, *Corble* 1410.

Witness says there is an opinion that the Pollution of Rivers Act, 1876, is likely to prove inoperative as far as pollution by solid substances goes, as it must be proved that such pollution interferes with the flow of the stream, *Bartholomew* 1731–1736.

Proposed conservancy boards should have jurisdiction to attend to the purity of rivers, *Rawlinson* 208, 247; *Lloyd* 1516–1518; *Bartholomew* 1695, 1699, 1731; *Denton* 2443; in some cases this might be advantageous, but each case must be considered separately, *Hawkshaw* 2801.

Water companies drawing water from the rivers should contribute to the expense of conservancy boards, *Rawlinson* 265 *et seq.*; marked improvement of Thames as to purity since establishment of conservancy authority, *ib.* 268——The companies taking water from the Lee do pay 1,000 *l.* a year to the Conservancy Board to be spent in attending to the purity of the water, *Coote* 1408, 1426 *et seq.*

Private Acts. Two or three thousand private Acts in force having reference to drainage, navigation, &c., *Ridley* 35 *et seq.*——They greatly cripple operation of general Acts, *ib.* 37——It would be impossible to repeal them, as no one could know what was really being repealed, but witness recommends appointment of some authority to override (after inquiry) any of their provisions which are useless or harmful, *Ridley* 49, 84, 88, 127; *Abernethy* 501.

Observations of the Committee upon the obstruction these private Acts are to effective carrying out of any system, *Rep.* iv——Provisional Order recommended by Committee should provide for the repeal of any provisions of private Acts interfering with scheme, *Rep.* v.

A commission of sewers or district drainage board cannot be set up under the present state of the law when a district is in the possession of anybody under a private Act, *Macturk* 2118.

A private Act in each case is the best mode of dealing with drainage, the interests being so complicated, *Tweed* 1967–1972——A private Act, promoted by owners, is the best mode of legislation; no greater expense than a Provisional Order under a General Act, as in a case of any importance that too would be certain to be opposed before Committees of Parliament, *Hawkshaw* 2812–2819, 2852, 2870.

Instance of expense of obtaining a private Act of Parliament under the present system, *Brundell* 1106.

See also *Provisional Order.*

Provisional Order. The subject of drainage varies too much in different cases to be dealt with in detail by one Act, but there should be a general Act passed giving authority to some Government department to issue Provisional Orders for special cases after inquiry; this would give a thorough appeal before the Committees of both Houses of Parliament,

Provisional Orders—continued.

Parliament, *Peel* 343–348, 360; *Abernethy* 435, 436; *Grantham* 863, 868; *Percival* 1009, 1018-1021; *Bartholomew* 1700, 1701, 1723-1727.

Recommendation of the Committee that Government Department in charge of drainage should frame a scheme for each case after inquiry by an inspector (who should hear objections on the spot), and that this scheme should then be embodied in a Provisional Order, *Rep.* v.

See also *Private Acts.* *Remedies Suggested* (*Legislation*).

Public Health Act, 1876. Witness suggests that river improvements should be brought within the provisions of the Public Health Act, 1876, *Rawlinson* 188, 190, 194, 196; *Grantham* 871 *et seq.*

Pumping Works. Have been put up in the Witham district by Sir John Hawkshaw, and have freed the east fen near Boston from floods, *White* 1783, 1789, 1795.

Q.

Quarter Sessions. Under Land Drainage Act there is an appeal from rates assessed by Commissioners of Sewers to Quarter Sessions, *Ridley* 70; *Peel* 339; also under Thames Valley Drainage Act, *Hawkins* 2686——On the Don there is an appeal to Quarter Sessions against rates assessed by an inspector named by Conservators, but it has never been required, *Brundell* 1124.

Appeal to Quarter Sessions should be retained, *Ridley* 71; *Grantham* 917 *et seq.*, 946.

Appeal to Quarter Sessions should not be retained, as it causes delay and uncertainty, *Hawkins* 2698–2703, 2764.

R.

Railways. Competition of railways has almost destroyed river navigation, *Peel* 297, 319; *Abernethy* 401; *Coote* 602; *Grantham* 810, 908; *Tarbotton* 1233; *Furley* 1313; *Lloyd* 1456. 1502; *Tebbutt* 2011; *Lowndes* 2545——In some cases railway companies own the tolls of navigations, *Tweed* 1935, 1936; *Macturk* 2083.

Navigations in some cases exercise a check on the charges of railway companies *Grantham* 812; *Tarbotton* 1235; *Furley* 1331; *Lowndes* 2548, 2561——Railways would derive benefit if navigations were abolished in the interests of drainage, and might be called upon to contribute in proportion to that benefit, *Tarbotton* 1233–1236, 1268, 1269, 1297 *et seq.*

Require to be supervised by river authority in making their bridges, as these sometimes are of insufficient size to pass off flood water, *Tarbotton* 1237; *Denton* 2469, 2470——Railway embankments sometimes prevent flowing off of flood, *Lloyd* 1559 *et seq.*; may have done so in certain cases (it is alleged to be the case at Burton), but generally Parliamentary Committees see that proper openings are left, *Hawkshaw* 2805–2809.

Rainfall. The serious floods of 1875 and 1876 were partly owing to heavy rainfall, *Peel* 309, 313; *Brundell* 1074; but floods are now doing greater injury from other causes than amount of rainfall, *Peel* 309, 313, 314; *Abernethy* 414, 415; *Coote* 593; *Grantham* 891; *Brundell* 1067; *Tarbotton* 1232; *Tweed* 1950, 1951; *Tebbutt* 2023; *Denton* 2382 *et seq.*; 2412–2414; *Hawkshaw* 2811.

Contrary opinion that floods are simply proportioned to rainfall, *Rawlinson* 161, 234, 235; are no worse than they used to be, *Earl of Malmesbury* 2608.

Rateable Value. Should be the basis of drainage rate, *Lloyd* 1498, 1524; *Bartholomew* 1689–1698; *Percival* 1023–1026.

Rating for drainage should be an equal rate over watershed, according to rateable value, with a second rate for direct benefit, *Grantham* 915, 924, 928; *Tarbotton* 1226; *Tebbutt* 2027, 2041; *Denton* 2505–2511.

See also *Benefit.* *Rating.* *Remedies Suggested* (*Rating*).

Recommendation of Committee that taxation should be raised on the basis of rateable value, lands below paying a much larger proportion than lands above flood level, *Rep.* vi.

Report, 1877—*continued.*

Rating (*Existing Power of*). Commissioners of Sewers have very extensive powers of rating under the older drainage Acts, *Ridley* 17 *et seq.*——The Act 3 & 4 Will. 4, c. 22, is the first Act that established differential rating in proportion to benefit derived from works, *Ridley* 25-31——Under the Land Drainage Act rating is also according to benefit, and from the decision of the Commissioners there is an appeal to Quarter Sessions, *Ridley* 70; *Peel* 339——There is in this Act no provision for rating towns, however much they may be benefited, *ib.* 341; *Coote* 636.

The possibility of having a lengthy and expensive appeal in such a difficult matter as an assessment according to probable benefit to be derived, diminishes the value of the rate as a borrowing security, *Hawkins* 2698-2703; *Hawkshaw* 2822, 2823.

In the Witham drainage district the rate varies in different parishes according to a scale fixed in the original Act of Parliament forming district, and in each parish it is an equal acreage rate, *White* 1774, 1838 *et seq.*——Under Thames Valley Drainage Act all land less than five feet above the highest flood-point is liable to be rated, *Grantham* 841, 946.

For recommendations and suggestions of witnesses, see *Remedies Suggested* (*Rating*).

Opinion of the Committee that taxation according to benefit, and equal taxation on all land within a certain level, are both open to objection; they recommend that the whole watershed area should be rated on the basis of rateable value (including towns and houses), but that land above flood-level should pay on a much lower scale than land below it, and that there should be power to make exceptions in special cases, *Rep.* vi.

Recommendation of the Committee that power of rating should be limited, *Rep.* v.

"*Ratione Tenuræ.*" The liability to repair banks, &c. being "*ratione tenuræ,*" interferes with execution of necessary works; it is spread over so many persons, and there is no authority to enforce it, *Ridley* 40-48——These liabilities are preserved under all the existing Acts, *ib.* 43——Power should be given to commute this special liability for a money payment; any land which was freed from this liability by commutation would then be equally liable for rates with the rest of the district, *ib.* 44, 45.

Observations of the Committee upon liability "*ratione tenuræ,*" *Rep.* iv.

Rawlinson, Mr. Robert, C.B. (Analysis of his Evidence.)—Is a Civil Engineer and Chief Inspector under the Public Health Act, 149——Was Chairman of the Rivers Pollution Commission (1865 to 1868), which took evidence on the Rivers Thames, Lee, Avon and Calder, Ribble and Mersey, and reported on the first four, 151, 153—— On the River Thames the floods sometimes do serious injury to vegetation (when the water stands any length of time), 154——On the Aire and Calder damage has been done to bridges, roads, &c., on one occasion to the amount of a million sterling, 155.

Thinks that improved land drainage and cultivation have not affected heavy floods to any appreciable degree; floods occur when the land is thoroughly saturated, and that depends on the amount of rainfall, 160-163, 219, 234 *et seq.* 256-262, 272; though slight floods over small districts, for instance in summer thunderstorms when the land is too dry to absorb rain, may have been increased, 161, 221, 274——Floods have been much aggravated by the reckless pollution of rivers by solid matter, 165, 245.

Weirs, locks, and mills often interfere with drainage and do damage by water-logging land immediately above them, 198; but in serious floods little would be gained by interfering with them; certain places would indeed be relieved, but at the expense of the districts below them, 173-179, 199-201——Believes that if all the weirs from Oxford to Teddington were removed floods would be as serious as now, and there would be no river in a dry season, 202——Distinguishes the case of tidal locks and tidal floods, 203, 211.

The only general remedy against floods is embanking, 164, 207——It is less expensive than dredging, 167-169, 207, 209, 210; unless there is valuable manufacturing property on the banks, in which case dredging is the only thing to be done, 169——Impounding water is of no use for preventing floods, as the reservoirs would have to be impossibly large, 171, 172——Does not think embanking would raise the level of the bed as the scour of the river would be much increased, 180, 181——Believes that dredging at the mouth of the river is never necessary except for the purpose of navigation, but that dredging may be necessary where tributaries fall into main streams, 240-242.

Embankments need not be close to the rivers' edge, they might go inland of meadows now benefited by floods, 185, 189, 227——In this case there would have to be provided arterial drainage (open cuts) on the land side of the embankments, 186, 187, 207, 230.

Recommends that each large river-bed should be placed under one jurisdiction, with local representation and taxation; that smaller areas should be grouped under a central Board, and that these river Boards should have power to regulate all interference with the foreshore of rivers by millers, or others, 182, 188, 287, 290; to tax according to benefit conferred, 183 *et seq.* 191; determining the area to be rated, and the scale of rating, 193, 194, and to prevent pollution by solid substances, 208, 245 *et seq.*

From

Report, 1877—*continued.*

Rawlinson, Mr. Robert, C.B. (Analysis of his Evidence)—*continued.*

From these Boards there must be an appeal, in all cases, to a Central Conservancy Board in London (possibly the Local Government Board), which would act by means of local inquiry by professional inspectors, 182, 190, 195-197, 280, 287.

Refers to the case of London floods; says they might easily be prevented, 211-218; and have not been increased by the Thames Embankment, 217, 233; though they have been by the removal of Old London Bridge, 216——Under the Thames Conservancy Acts the river has been improved and cleansed, but floods continue, as there is no power to embank on private land, 263-270.

Re-assessment. When rates are imposed according to benefit received from drainage works it would be well to re-assess this every few years to prevent injustice, *Brundell* 1176.

Remedies Suggested:

1. *Management:*
   - (a.) *Constitution of Authorities.*
   - (b.) *Powers of Authorities.*
2. *Works.*
3. *Rating.*
4. *Legislation.*
5. *Miscellaneous.*

1. *Management:*

(a.) *Constitution of Authorities:*

Almost unanimous opinion that to prevent conflict of authorities, and lest the drainage of one district should injure another, the catchwater are aof each river, from its source to the sea, should be under some one authority, *Ridley* 51, 91; *Rawlinson* 182; *Peel* 331, 351; *Abernethy* 422; *Coote* 615; *Roberts* 752–754, 765; *Grantham* 819, 832; *Percival* 1009, 1054; *Brundell* 1104; *Tarbotton* 1256; *Lloyd* 1461; *Williams* 1600; *Bartholomew* 1692: *Tweed* 1903, 1958; *Tebbutt* 2012 *et seq.*; *Mills* 2312, 2377; *Denton* 2443, 2493–2497; *Lowndes* 2557; *Hawkshaw* 2793, 2875.

The whole of a river should be dealt with at once, but it is not necessary that there should be one Board for the whole of a large river; it might be divided into sections; they would not be likely to clash if they did not overlap; there must be an appeal in case of dispute to some central authority; but this division would secure a better attendance on the Boards, *Hawkins* 2705, 2706, 2730, 2738 *et seq.*, 2751 *et seq.*

Under the central river Board, and subject to it, there should be smaller district boards, having jurisdiction over side streams, *Ridley* 55——Over small districts, *Rawlinson* 182; *Peel* 331, 373 *et seq.*; *Grantham* 858; *Brundell* 1129——Over upland districts, *Abernethy* 446——The existing bodies should continue to exercise local jurisdiction, *Percival* 1026.

When the river is very large, there might be district Boards with local jurisdiction, from which the central board might be elected, and to which they should be subordinate, *Denton* 2493-2497.

The various rivers forming the Humber should be dealt with separately, *Bartholomew* 1752; *Macturk* 2137 *et seq.*; *Mills* 2340——The estuary should be under representatives from the Boards of the various contributory rivers, *Denton* 2494–2497.

Members of the River Board should first be appointed by the Crown and afterwards elected by ratepayers, *Ridley* 103–105; should be elected by ratepayers in proportion to tax payed, *Tebbutt* 2015; should be elected by landowners of the watershed, *Coote* 615; by owners and occupiers, *Tweed* 1961; should consist of landholders and representatives of towns, *Hawkins* 2705.

Board should consist of but few members representing each of the conflicting interests on the river; in case of dispute, no one interest should be allowed to be outvoted, but there should be secured in all cases an appeal to the Central Government Board, *Percival* 1009, 1021, 1033, 1054.

Boards should be formed from the boards of guardians, mayors of towns, and courts of quarter sessions of district, *Lloyd* 1498, 1575; should consist of representatives of county magistrates, mayors of towns, and navigation interests in equal numbers, *Bartholomew* 1702.

Present Navigation Commission on the Severn is so satisfactory (composed of thirty members representing various bodies) that it should be extended over the whole river, *Williams* 1586, 1600——Witham Commission composed of large landowners elected from the District Commissioners who are elected by owners and occupiers, could not be improved upon, *White* 1796 *et seq.*

Boards should be established compulsorily (any existing body to be made use of, if possible), *Ridley* 51, 91, 94; *Rawlinson* 182; *Abernethy* 434; *Coote* 615, 617;

REMEDIES SUGGESTED—continued.

1. *Management*—(a.) *Constitution of Authorities*—continued.

Roberts 764; *Grantham* 820; *Percival* 1014; *Bartholomew* 1722 *et seq.*; *Tebbutt* 2046; *Denton* 2493.

Landowners should be allowed to proceed under the Land Drainage Act, if they pleased, but in case of neglect and complaint Boards should be formed compulsorily, after inspection by a Government inspector, *Peel* 331, 343, 360.

The actual river should compulsorily be placed under one Board, but smaller districts should have the option whether they should take advantage of the improved state of the river, and form themselves into Boards to carry out land drainage, *Brundell* 1127–1129.

A Government Department should decide what rivers require to be dealt with, and in these cases Boards would be formed compulsorily; in less important cases it should be permissive, *Hawkins* 2708 *et seq.*, 2724.

The formation of Conservancy Boards should be voluntary; any district which really suffered from floods would be sure to move; a private Act of Parliament would be brought in, and the questions of area, of rating and jurisdiction, would be discussed before Committee, *Hawkshaw* 2798.

(b.) *Powers of Authorities:*

Besides the usual conservancy duties of keeping the river in order, the River Boards should have power to regulate and prevent interference with the foreshore by mill-owners and others, *Rawlinson* 182, 288, 290——To buy up mills and weirs compulsorily (giving compensation), *Abernethy* 497, 539; *Tarbotton* 1265; *Lloyd* 1474, 1509; *Mills* 2368——To execute works at the outfall of rivers between high and low-water mark, *Ridley* 59, 139——To take land for and make new cuts, &c., *Tweed* 1955; *Tebbutt* 2051——To prevent pollution (by solid substances), *Rawlinson* 208, 247; and to carry out the Pollution of Rivers Act, *Lloyd* 1516–1518; *Bartholomew* 1695; *Denton* 2443——To store water, *Ridley* 130; *Grantham* 812; *Denton* 2512—— To take down and re-erect bridges of insufficient size, and to regulate the size of bridges, especially of railway companies, *Tarbotton* 1245; *Denton* 2469——To keep up navigations, *Grantham* 816; *Denton* 2572; *Lowndes* 2551; To carry out the Salmon Fisheries Act, *Bartholomew* 1695——To take the control of river banks entirely out of the hands of proprietors, so that they may not plant or fence without leave, *Rawlinson* 288–292; *Abernethy* 564, 570; *Mills* 2354—— To take entire control within, say, 10 feet above the river level, within which no work might be done without consent of Board, *Denton* 2514 *et seq.*

2. *Works:*

The only real remedy for the prevention of floods is embanking, not necessarily immediately on the river bank, *Rawlinson* 164 *et seq.* 207——Embanking, leaving meadows by the side of the river to serve as a high level drain, over which the flood water would run rapidly off, *Abernethy* 475, 480, 563 *et seq.*

Rivers now require dredging, not to lower their natural bed, but to bring it back to that natural level which years of neglect have raised, *Tarbotton* 1250–1252—— Dredging would be very expensive as nature would be working against it, and it must be constant; it should only be resorted to when the river banks are covered with valuable manufacturing property, *Rawlinson* 167–169.

Rivers and mills should either be removed, or at least placed under proper regulation as to opening of sluices on first notice of flood, *Ridley* 59; *Peel* 319; *Grantham* 816, 906; *Tarbotton* 1232, 1285; *Lloyd* 1509—— Should be made self-acting, *Coote* 646 —— Overfall weirs should be enlarged and can be made so as actually to quicken the flow of water, *Williams* 1646 *et seq.*——Weirs should be made to fall, so as to be no obstruction in case of floods, *Brundell* 1170——Iron posts should be substituted for wooden ones at the weirs, and there should be lifting gates, *Child* 1396–1400.

Enlarged bridges are required, *Peel* 332; *Denton* 2469; *Tarbotton* 1245.

New cuts are required, *Bartholomew* 1695; *Tweed* 1955——Use should be made of side streams which now often lie lower than the main streams (owing to silting up), *Denton* 2434 *et seq.*

Boring through the water-holding stratum would often relieve a district from floods, and possibly give a supply of good water, naturally filtered, to other districts, *Denton* 2461, 2471–2476.

3. *Rating.*

Should be according to benefit conferred or damage averted by improvements, *Ridley* 67; *Rawlinson* 183; *Peel* 349; *Brundell* 1129; *Williams* 1620; *Tweed* 1911; *Mills* 2315; *Hawkins* 2760, 2761; *Hawkshaw* 2795.

Uplands, though they do not benefit by the improvements, should contribute something to the expense of arterial drainage, as they send down the water that causes floods and

REMEDIES SUGGESTED—continued.

3. *Rating*—continued.

and has to be carried away, and the river serves as their main drain, *Peel* 350, 379; *Abernethy* 423; *Coote* 620; *Tarbotton* 1222; *Tweed* 1913; *Tebbutt* 2021-2024; *Denton* 2498; *Hawkshaw* 2794-2797, 2810.

Uplands should not contribute, *Mills* 2316; *Hawkins* 2747, 2748; should not contribute unless by new works they should send down their rainwater faster, *Macturk* 2122, 2123——The rate should only extend to lands freed from floods, *Williams* 1620 *et seq.* 1643.

There should be one uniform acreage rate over the whole taxable district for main works; another rate assessed by sub-districts according to the benefit derived by improvements, *Grantham* 924-930; *Tarbotton* 1219-1226——One uniform rate, as the poor rate, over the whole watershed, and another rate over districts benefited in proportion to benefit received, *Denton* 2498, 2499, 2505-2511.

There should be a uniform acreage rate over whole watershed, *Lloyd* 1527, 1577——Over whole district benefited, as the poor rate, *Bartholomew* 1688-1698.

The rate should be a uniform acreage rate, on whole area benefited, on this basis sub-districts should rate themselves for their local works, and the whole area should be rated in the same manner for main works, *Percival* 1023-1026.

There should be an equal acreage rate but the whole taxation area should be divided into two parts, one below and one above flood level, and the one should pay about ten times as much as the other, *Tebbutt* 2015-2032, 2041——Uplands and lowlands should be rated in the proportion of one to twelve, *Coote* 622.

Land should pay according to its height above the river level, all land contributing that has not a natural outfall of five feet, *Mills* 2316-2320——Each field should be considered separately (height above river not being a sufficient criterion of benefit to be derived by improvements) and assessed accordingly, *Hawkins* 2760, 2761, 2763——Lands on the Don are rated by an expert according to height of each field above the outfall level, and this has never been appealed against, though there is a power of appeal, *Brundell* 1124.

The area and incidence of rating should be assessed by River Boards with appeal to Quarter Sessions, *Ridley* 70; *Grantham* 917——By River Boards with an appeal to Government Board in London, *Abernethy* 443.

Should be assessed by Government inspectors after local inquiries, *Rawlinson* 197; *Peel* 347——By an expert, *Brundell* 1129; *Hawkins* 2698——It is most important that the decision of the inspector should be final, as the possibility of an appeal to law against rates diminishes their utility as a security for borrowing, *ib.* 2698-2703.

Should be settled by River Board on a basis fixed in the Act constituting the district, *Coote* 620.

Separate districts (of a main River Board) should pay according to the expense of draining their own area, *Roberts* 765, 770——Districts that have already executed works that are useful to the drainage of the whole valley should have this considered, and they should be rated less for the future, *Brundell* 1132.

Rating should be limited to a maximum of 3 *s.* an acre, *Mills* 2314.

Towns as well as agricultural lands should contribute, *Rawlinson* 188; *Peel* 341-343; *Coote* 624; *Grantham* 890; *Brundell* 1144, 1194; *Tarbotton* 1224, 1258; *Hawkins* 2706.

Where rating is according to benefit conferred by works (which, in order to raise money, must be calculated beforehand), there should be a revision of the assessment every few years to provide for cases of injustice, *Brundell* 1176-1179.

4. *Legislation:*

There should be a general Act consolidating all the Acts relating to drainage, and which should establish a River Board in each watershed; it should contain, *inter alia*, a power of appeal to some Government Department for leave to override the provisions of any private Act that interferes with carrying out necessary works, *Ridley* 78-80, 84-88, 119.

The question is too large to be dealt with by one Act applying to each case, but an Act should be passed giving power to some Government Department to issue special Provisional Orders (after inspection by officials), and containing clauses (like the Lands Clauses Act, &c.), which should attach to the particular Order; the Provisional Orders would be submitted to Parliament, and in case of opposition would be referred to Committees, *Peel* 343-348; *Abernethy* 435; *Grantham* 868; *Percival* 1018-1021; *Bartholomew* 1700, 1701, 1723-1727.

Witness prefers a special Private Act to a Provisional Order, the interests and details being so complicated, *Tweed* 1967-1972.

Report, 1877—*continued.*

Remedies Suggested—continued.

4. *Legislation*—continued.

The matter should be left to private action; if landowners are injured by floods they will bring a Bill before Parliament (for which no consents are required); this will distinctly state what they wish to do, whom they wish to rate, and what the expense will be; and it can be opposed, if needs be, in Committee——A Provisional Order under a general Act would, in important cases, be no cheaper, as it would be sure to be opposed, and in that case would also be referred to Committees, *Hawkshaw* 2812-2819, 2852, 2870.

The Public Health Act, 1871, should be extended so as to include works for drainage and protection from flood, *Rawlinson* 188, 196——As far as towns are concerned, *Grantham* 871, *et seq.*

5. *Miscellaneous:*

Thames Valley Drainage Act, 1871, is very useful, *Ridley* 147; and might in many cases be followed, *Grantham* 832, 841, 946; *Hawkins* 2778.

Liability to keep protection works in repair, "*ratione tenuræ*," should be commuted for a money payment, as this liability, devolving on many persons and pressing unfairly on them, cannot be enforced, *Ridley* 41 *et seq.*

Any occupier injured by floods should have a power of indictment against the Conservancy Board; this would prevent the necessity of any reference to, or interference by a Government Board, *Coote* 620, 631, 633.

Conclusion of the Committee that the circumstances of each river differ so much that the details of the measures to be adopted in each case must be considered separately, *Rep.* iv., v.

Rent. Probable increase of rent from removal from land of liability to floods, *Brundell* 1116, 1118—— Comparison of rent from flooded and unflooded lands, *Lloyd* 1484, *et seq.*

Case of greater rent obtained by flooded than by unflooded land, *Earl of Malmesbury* 2611, 2612, 2633, 2634.

Reservoirs. See *Storage of Water.*

Reservoirs Bill. Witness approves of the provisions of this Bill; it gives power to landowners to construct reservoirs and supply water beyond their own estates, receiving payment for it from the sanitary authority of district, *Denton* 2484-2489. (This Bill has since been passed into law.)

See also *Storage of Water.* *Water Supply.*

Ridley, Mr. George. (Analysis of his Evidence.)—Is one of the Inclosure Commissioners, 1, By whom the appointment of Commissioners of Sewers and Drainage District Boards is carried out under the Land Drainage Act, 1861, 2; that Act has reference to arterial agricultural drainage; it takes water to the rivers, and rather increases than decreases floods, 5-9——Witness hands in list of Acts relating to Commissioners of Sewers and list of existing Commissioners of Sewers (under the Act of Henry VIII. and the Land Drainage Act, 1861) and separate Drainage Districts, 4——States powers of Commissioners of Sewers for embanking and clearing rivers, 10-17, and for rating, 18-33, 95-102.

Commissioners of Sewers have large powers for dealing with floods and improving, &c., rivers under general Acts, such as the Act of Henry VIII., and the Act of 1861, 34; but their operation is checked by the 2,000 to 3,000 existing private Acts on the subject, 35, 36; by navigations, 37-39, and by the liability to maintain works being "*ratione tenuræ*," 40-47; and by the limited power of rating any but the district immediately affected, 23.

Recommends assignments to some body, of power to put an end to liability to maintain navigation when it has become useless, 49, 50, 84, 88, 127, 128.

Recommends compulsory establishment for the whole drainage area of each river, from the watershed to the sea, of a central Board, 51 *et seq.* 81, 91 (first nominated, afterwards elected, 103–105), with sub-committees having jurisdiction under the main body over side streams, 55, 82; the central Board having power (in the interests of navigation where advisable, as well as of drainage, 52) to maintain banks, 55, 82; to clean out streams, 61, 63, 64; to prevent pollution by solid matter, 63; to keep clear outlets to sea, 54, 59, 137, executing works between high and low water mark, 138; to supervise and control mills, weirs, and dams, 59; to store up water in reservoirs, 129–131; to impose rates according to benefit conferred or loss averted by the works, 66, 67, 140–143; to supersede all existing bodies, 87.

The Board should have power to commute for a money payment any existing liability to perform certain repairs "*ratione tenuræ*;" any one having commuted such a liability would then take his share in the general rates, 44——The appeal against rates

Report, 1877—*continued.*

Ridley, Mr. George. (Analysis of his Evidence)—*continued.*

rates assessed by the Board should be, as at present, to Quarter Sessions, who can if they like refer the matter to a professional valuer, 70, 71, 141.

All the Acts relating to drainage of rivers should be consolidated into one Act, 78.

It would be impossible to repeal all private Acts that bear on the subject, but easy means ought to be provided for getting rid of any provisions that limit or interfere with a complete system of management (say, on the application of the River Board to a Government Department), 84, 117–121.

The Act required for these purposes must include provisions for enabling lands now benefited by the floods to be irrigated, 144; and for removing and regulating mills compensating the owners, 59, 111–116.

Witness refers to a Draft Bill submitted to Sir George Cornewall Lewis, when Home Secretary, for the prevention of floods, 146, 147——He approves highly of the Thames Valley Drainage Act, 1871, 148.

Rivers of England and Wales. Classified list of, with the length of their courses and area of their watersheds, handed in by witness, *Grantham* 821, and *App.* 282–286.

Rivers. Particulars of various rivers.

See *Avon* (*Hampshire*). *Avon* (*Warwickshire*). *Aire and Calder.* *Derwent.* *Don.* *Humber.* *Ivel* *Lee.* *Lug.* *Nene.* *Ouse.* *Severn.* *Shannon.* *Thames.* *Trent.* *Witham.* *Wye.*

River Pollution Commission. Reported on Thames, Lee, Aire and Calder, and took evidence as to Ribble and Mersey, 1865–1868, *Rawlinson* 150 *et seq.*

A Conservancy Board was formed for the Lee in consequence of this inquiry, for the purpose of preventing pollution and maintaining navigation, *Corble* 1403.

Road Detritus. See *Denton. Pollution.*

Roberts, Mr. Samuel Usher. (Analysis of his Evidence.)—Is the Assistant Commissioner of Public Works in Dublin, and well acquainted with the General Drainage Acts, 1842, 1845, and 1846; 647, 648——The Act of 1842 enabled any proprietor to put the Commissioners of Public Works in motion; they sent down an inspector; if he reported that the district required draining, with the consent of two-thirds in value of the landowners, a district was formed, and necessary works carried out by the Commissioners of Public Works, at the expense of the locality, 649–651 (the money being raised by annuities, extending over eighteen to twenty years, 652)——The lands were valued before the works began and when they were finished, and the rate was proportioned to increase of value, 657——Altogether about 2,390,000 *l.* was expended on about 266,000 acres, and the annual value was increased by 74,500 *l.*; this was exclusive of the yearly rate for maintenance, 665–661. 663——Many of the works were undertaken for the sake of giving employment during the famine, 666——Of the sum spent, 1,337,868 *l.* was remitted by Government, and 152,180 *l.* was charged to the counties for improvement of public works, and there remained about 900,000 *l.* charged on the land, 696.

Between 1853 and 1863 nothing was done, as the Treasury refused to undertake any new liability, 668——In 1863 an Act (subsequently amended in 1865) was passed giving Local Drainage Boards power to do necessary works themselves, with the approval of the Commissioners of Public Works, who issue a Provisional Order, which is afterwards confirmed by Parliament, 675——The money is lent to the Local Board by the Commissioners, at 4 per cent. interest, 682, and repayable by annuities, 684——Under this Act, which has worked well, 51,064 acres have been drained, at an expense of about 155,000 *l.*, with an increased letting value of 9,500 *l.* There is a further charge for maintenance, 774.

What has been done on the Shannon has been done for navigation, under a special Act of Parliament, 708——The Government offered 100,000 *l.* towards the improvement of that river for arterial drainage, but the proprietors on that river thought the expense that would fall on them would be greater than the result would be worth to them, 709–719.

The works above-mentioned have been done, and the districts formed piecemeal, and in some cases floods in lower portions of river have been increased by them, 720, 729, 751——But the Lake Corrib district is a case in which works have successfully been done over a large area under the above Acts, 781.

Embankments are often the only remedies that can be provided at a reasonable cost, 745.

The best system, though very difficult to carry out, would be to place each river under one jurisdiction, 752, 754, 765——Unless the rating on the lands on the tributaries were much lower than that on the lands on the main river, it would be

Report, 1877—*continued.*

Roberts, Mr. Samuel Usher. (Analysis of his Evidence)—*continued.*

impossible to get those proprietors to consent to any large scheme whose lands lying away from the river could be drained cheaply; therefore, though there should only be one Board for the whole river, the drainage area should be divided into districts, each of which should contribute according to the expense of the works required for its own limits, 764, 770, 771——Towns have never yet been affected by the drainage works, therefore the question as to their being rated has never arisen, 779.

No works have been executed in Ireland for the storage of water, 782.

S.

Severn, River. Upper Severn, from Bewdley Bridge to Colebrookdale, is under towing-path trustees (by Act of Parliament), *Lowndes* 2529 *et seq.*——They have spent a good deal in keeping up the banks, *ib.* 2561, 2664, 2573; but the navigation is now ceasing, the tolls do not pay expenses, and the trustees are desirous of being abolished, *ib.* 2542, *et seq.* 2572.

From Stourport to Gloucester Severn is under the Severn Navigation Commission, *Williams* 1586–1589—— The floods on this river are very high, and could not altogether be prevented, as they are owing to rapid flow of rainwater from Welsh hills, and have not been increased by improved agricultural drainage, *ib.* 1591–1596, 1608.

The Commission has erected new weirs of improved shape, improved the navigation, and quickened the passage of floods, *ib.* 1591, 1599, 1646 *et seq.*, 1660 *et seq.*—— What they have done has tended to drown the districts below, *ib.* 1598——Jurisdiction was not extended below Gloucester, owing to the opposition of that town, lest it should lose its sea-going trade by its going higher up river, *ib.* 1626——The income is about 14,000 *l.* a year derived from tolls, and from an allowance from Great Western Railway in compensation for traffic of which railway has deprived navigation, and on security of which Parliament had allowed money to be borrowed, *ib.* 1601–1607. 1612–1618.

Description of new weirs, 1646–1651, 1660 *et seq.*

If the jurisdiction of the Commission were extended, much good could be done by removing rocks and shoals in channels, making new cuts, and putting up improved locks and weirs, *ib.* 1618, 1619, by which flow of flood-water and navigation would be improved, *ib.* 1630, 1660—— Tolls would pay for part of the expense, *ib.* 1630, 1633; when they are insufficient, rates must be levied in proportion to benefit from owners whose lands were relieved from floods, *ib.* 1620 1624, 1643–1645.

Sewers, Commissioners of. List handed in of existing Commissioners of Sewers appointed under the Act 23 Henry VIII., and also under the Lands Drainage Act, 1861, *Ridley* 4; *App.* 279, 280——There is no difference between Commissions of Sewers and District Drainage Boards, except in the mode of their appointments, *Peel* 368——Powers of, for executing works, *ib.* 10–17, and for rating, *Ridley* 18–33——Under the various Acts affecting them they have considerable power, but they are impeded by innumerable private Acts, *ib.* 35–37, by navigations, *ib.* 39, and by the liability to keep works in repair being "*ratione tenuræ*," *ib.* 41–45.

Witness recommends the appointment of a Commission of Sewers for the drainage area of each river, *Ridley* 51 *et seq.* 91, with power as well over the outfalls of the river, *ib.* 59——The present Commissions, wherever they exist, to be preserved with enlarged powers, *ib.* 93.

Cannot be appointed when the district for drainage or navigation is under a body established by private Act, *Macturk* 2118——Under Act of 1861 cannot be established over a navigable river, *Lloyd* 1563.

General recommendation that there should be Commissions of Sewers, or similar body, for each watershed.——See *Remedies Suggested* (*Management*). *Watershed.*

See also *Drainage Districts.*

Shafts. Land could often be relieved from floods by sinking shafts through the impervious into the water-bearing stratum, *Denton* 2461, 2462——Instance of successful application of this, *ib.* 2471–2475.

Shannon, River. Almost the whole length of channel has been improved and enlarged for navigation purposes under a special Act, *Roberts* 712, 719; but no scheme has been able to be carried out for drainage, *ib.* 709——Report was made by engineer on scheme for relieving land on banks from flood, to which Government offered to give 100,000 *l.*, the rest to be charged on lands to be improved, *ib.* 714——The proprietors refused to accede to this, not expecting improvement proportionate to cost, *ib.* 715–717.

Somersetshire. Floods in the lowlands of Somersetshire have become so bad (covering 100,000 acres at one time in January 1877), that inhabitants have been compelled in this

Report, 1877—*continued.*

Somersetshire—continued.

this Session to apply for a private Act of Parliament, finding the general Acts insufficient to deal with the problem on account of the number of consents required, and the difficulty of deciding on area and system of rating, *Peel* 309, 310——That Act is founded on the report of witness, *Grantham* 801–804, 947; and follows very nearly the Thames Valley Drainage Act, 1861, *ib.* 948. (This private Act is now passed.)

Important works had been carried out early in the century, but improved agricultural drainage has much increased water to be carried off, and outfalls had been neglected, *Grantham* 804, 951–955.

Storage of Water. Could not be done on a sufficiently large scale to affect floods, *Rawlinson* 171, 172; *Abernethy* 585; *Bartholomew* 1686; *Denton* 2459, 2461; but should be part of the duty of the Conservancy authority, *Ridley* 130; *Grantham* 812, 877; *Denton* 2512.

Could be done for irrigation, *Abernethy* 587; for supplying water to streams in dry season, *Denton* 2460; by regulating weirs, water could be kept up for irrigation and mills, and yet floods be prevented, *Grantham* 812–815, 932–937; this water should be paid for by persons using it, *ib.* 878; *Denton* 2512——Water could be stored for manufacturing purposes, and for compensating mills, *Bartholomew* 1720.

A totally distinct question from prevention of floods, *Peel* 337; *Coote* 625;——will have to be dealt with soon, but must be kept distinct from the drainage question, *Abernethy* 585——Should not be dealt with by Conservancy authority, *Percival* 1022.

Instance of successful storage and supply of water by private individual to cottagers (not his own tenants), *Macturk* 2143–2169.

On the Upper Thames, there is a plentiful supply of water to be got by boring, and there is no necessity of any artificial storage of water, *Taunton* 2180, 2187–2191——This no doubt applies to other places too, *ib.* 2192–2194; *Denton* 2450——Keeping clear the side streams in a valley (for instance at Oxford) would help to carry off floods as well as afford a storage of water, *Denton* 2434, 2435.

See also *Reservoirs Bill.*

Subsoil Drainage. See *Agricultural Drainage.*

Survey, Ordnance. Under the Thames Valley Drainage Act, 1871, the Ordnance Department were directed to survey the Upper Thames with a view of determining what area was to be included in the jurisdiction established by the Act. Owing to floods, this survey was not completed till 1875; and consequently nothing has yet been done under the Act, *Grantham* 960 *et seq.*; *Hawkins* 2658——The expense of this survey was borne by an equal acreage rate, *ib.* 2665——Witness thinks the Government should bear the expense of the preliminary survey (in all cases as well as this particular one), as it is nothing more than part of the survey of the country, and has only been done out of its turn, *ib.* 2707, 2714.

T.

Tarbotton, Mr. Marriott Ogle. (Analysis of his Evidence.)—Is Chief Engineer to the Corporation of Nottingham, and well acquainted with the Trent, 1196, 1197——The floods have been more frequent on that river of late years, and immense damage is done to the town of Nottingham by these floods, occurring at all times of the year, 1198, 1203, 1295.

Nottingham extends over a very small portion of the river, 1203; but the corporation have done considerable works in that portion, 1209——They have removed the old Trent Bridge, which obstructed the flow of water, and built a new bridge; this has made a difference of eighteen inches in the height of the river, 1212——They have also dredged the bed, and improved the banks, and lined them with stone, 1213; and they have obtained power by Act of Parliament to require all meadows to be raised to a certain height before being built upon, 1209.

Weirs as at present existing for the benefit of the navigation materially increase the floods, 1232; and as the bed silts up the weirs are raised higher, so that gradually the whole level of the river is raised, 1239——Certain weirs on the Trent ought to be at once removed, 1232——But without these weirs navigation would be impossible, 1233; and this competition acts considerably as a check on the rates charged by railway companies, 1235, 1236, 1297——Therefore, if not removed, the weirs should be so lowered and altered by falling gates as not to obstruct the flow of the flood-water, and be placed under the control of an authority who would open them in anticipation of floods, which the navigation authorities, simply consulting their own interests, will not do, 1232, 1283–1286——Railway embankments, in some cases, aggravate floods, in others they serve as a barrier against them, and insufficiently sized bridges also

Report, 1877—*continued.*

Tarbotton, Mr. Marriott Ogle. (Analysis of his Evidence)—*continued.*

hold up the water, 1237, 1247, 1248——Bridges at Burton are a serious obstacle to the proper flowing off of floods, 1243, 1244.

There should be a Conservancy Board with jurisdiction over the whole valley of the river, with power to do all necessary works, 1217; to rate the whole area for general works (as it pours its rain-water into the river) uniformly on the Poor Law assessment, 1219–1226, 1256, 1257——The immediate districts should, moreover, be rated according to the benefit they obtain from local works, 1260; and towns should contribute in the same way to the uniform rate, and also in proportion to the benefit they receive, 1224, 1258.

Bridges should be placed under control of the river Board, with power to take them down and enlarge them, and the Board should also have power to remove mills on paying compensation from the general rate, 1245, 1261–1265; and all management of the river should be removed from any existing authority, 1259.

The most necessary work is dredging, as the river is liable to be silted up; the object being not to increase the depth of the river but to remove accumulations and restore it to its normal depth, and this would not be a very expensive work, 1217, 1231, 1250–1252——It would be necessary, simultaneously with dredging, to widen and strengthen the banks, 1252.

Witness thinks that railway companies gaining by the abolition of navigations should contribute to the works, 1268; but admits that in advising the removal of weirs, by which navigation would cease, he had not taken into consideration the effect on the charges of railway companies, 1268, 1269, 1296, 1303.

Taunton, Mr. John Hooke. (Analysis of his Evidence.)—Is Engineer to the Thames and Severn Canal Navigation, and was formerly assistant to Mr. Brunel, 2170–2172; and has had long experience in river engineering, 2175, 2174——Gives gaugings of the water in the upper tributaries of the Thames, 2176 *et seq.*——There are no important floods in that part of the river valley, as the loose rocky soil lets the water sink through, 2184——There is no need there of making reservoirs, as by boring down to the water bearing stratum, a plentiful flow of water for any purpose is procured, 2180, 2187——Floods on the Upper Thames, if they are passed off rapidly, are, on the whole, advantageous, as the land is mostly meadow, 2204–2210.

Thinks that if the navigation on the Upper Thames were not neglected, the floods all through the valley would be much mitigated; with the overflow channels in good order, the water would pass rapidly down through the ponds kept up by the weirs, 2217–2221——The Thames Conservancy will not do much as the navigation does not pay; witness says this is owing to the fact of a link being missing in the chain of through navigation between Gloucester and the Thames, 2223–2229——He thinks care of the navigation the best cure for floods, 2216, 2222.

In those districts when the river is almost lost in the porous soil, the landowners do service by draining into the stream, and must be considered in a very different light to those who drain into rivers where the water is not wanted, 2242.

Taxation. See *Rating.* *Remedies suggested* (*Rating*).

Tebbutt, Mr. Charles Prentice. (Analysis of his Evidence.)—Lives near the River Ouse, and is a Member of the Management Board of the Middle Level District, 1985–1988 — That Board has jurisdiction under Act of Parliament over 130,000 acres which are now perfectly drained, but at a very considerable cost, 1989–1990——The Board is chosen from the Commissioners who are holders of a certain number of acres, and they raise for the works an equal acreage rate amounting to about 6 *s.* an acre, 1966–2004.

The floods in the Ouse Valley, above Earith, are caused by the proprietors of the wash lands (which were intended to act as a broad high-level drain), having obtained power under Act to raise a bank to prevent these lands being flooded; they had obtained the land subject to this obligation and liability, but there was no authority to represent the Earith district and oppose the application for the Act of Parliament, 2007–2009——The Ouse is in a bad state and is yearly becoming worse, 2010; a great part of its course is under no jurisdiction, but from the outfall to four miles above Lynn it is under the Ouse Outfall Board, to which a large tract of country contributes, and which keeps its part of the river in a nearly perfect state, 2017–2019.

It is absolutely necessary that the whole catchment area of the river, from end to end, and including the tributaries, should be under one board, 2013–2015, 2049, elected by the tax-payers in proportion to their contribution, 2015——The districts immediately affected by the floods would not be large enough to raise sufficient money for the necessary engineering works, 2013–2032; the upland districts which send down water should contribute, 2024, for though they would gain nothing by floods being prevented, they help to cause them, 2032 *et seq.*——The Conservancy Board should have very large powers to deal with everthing affecting arterial drainage, amongst other things power to take land to make new cuts, 2047–2051.

Report, 1877—*continued.*

Tebbutt, Mr. Charles Prentice. (Analysis of his Evidence)—*continued.*

It would be difficult to rate any land according to the benefit received by the improvements; the whole taxable area should be divided into two parts, lands below and lands above the flood level, and the one should be rated something like ten times as heavily as the other, 2041.

Tenants. Under Land Drainage Act, if expenditure exceeds 1,000 *l.*, it is special on owners, if not, it follows ordinary rule, *Peel* 339——Under Thames Valley Drainage Act, landlords are rated for new works, with power to charge tenants five per cent. on money expended, and tenants are rated for management and maintenance, *Hawkins* 2682.

Thames, River. As there is a Committee of the House of Commons now sitting on the River Thames, this Committee does not wish to go into details respecting this river; *observation of Chairman of Committee*, 2214.

Weirs do not materially increase the severe floods, though they do injury by water-logging land immediately above them, *Rawlinson* 177, 198, 204——The floods in London could easily be prevented by embanking, 212–215——They occur when there is simultaneously flood-water coming down from above, a high tide, and an east wind, *ib.* 203——They were increased by removal of old London Bridge, but not by the Thames Embankment, *ib.* 216–218——In spite of repeated legislation floods on Thames have continued because there has been no power (prior to Thames Valley Drainage Act, 1871) to embank on private property, *ib.* 264, 265, 269——Embankments are necessary higher up the Thames, but would not be expensive, *ib.*——The embankment need not be immediately on the river bank, *ib.* 185–189, 227.

There are no floods on the Upper Thames as the soil is porous, and the water runs through, *Taunton* 2184-2186——With proper care of the river for navigation, and the overflow channels being kept in good order, there need be no floods on the river, *ib.* 2217, 2222, 2228——There is a link missing in the through navigation to Gloucester, if this was completed the navigation would be remunerative, *ib.* 2215, 2225.

Weirs of bad construction much impede proper flow of flood-water, *Williams* 1662; *Child* 1399——Side streams near Oxford ought to be kept clear; they would help carry off flood-water, and afford a storage of water in dry seasons, *Denton* 2434, 2435.

See also *Thames Valley Drainage Act*, 1871.

Thames Valley Drainage Act, 1871. A very important Act; first attempt to deal with drainage question on a large scale, *Ridley* 147, 148.

In 1870 Thames Conservancy applied for power to rate riparian parishes above Long Wittenham; landowners opposing this, Bill was thrown out. In 1871 landowners introduced Thames Valley Drainage Bill, dealing with the whole Upper Thames, sixty miles in length, *Hawkins* 2655——Commissioners are named in the Bill, and they have jurisdiction over all land less than five feet above flood level, *Grantham* 841 (the height was taken from highest flood in 1873, *ib.* 845–855, 969 *et seq.*)——The Ordnance survey of the counties not having been completed, *Denton* 2713, maps had to be made; owing to floods Ordnance Department only completed them in January 1875, *Grantham* 960; *Denton* 2658——The area of jurisdiction was then fixed, and boundaries of minor districts marked off, *Grantham* 960——An equal acreage rate was then raised to pay expenses of survey and of obtaining Act of Parliament, amounting to 10,657 *l.*, equal to 2 *s.* 10 *d.* an acre, *Grantham* 960, 986; *Hawkins* 2665–2673.

No works have yet been done under this Act; opinion that as the jurisdiction of the Thames Conservancy for navigation is preserved, the two bodies must clash as soon as anything is done, *Hawkins* 2659-2662, 2728, 2731.

The central board raises a rate for main arterial works, and the district boards rate their own districts for local works; all rates (except first rate for preliminary expenses) are according to benefit, *Grantham* 880; *Denton* 2677–2679——Uplands are not rated, *ib.* 2681——There is an appeal to quarter sessions, *ib.* 2686, 2690——Opinion that this is not desirable; the rates are the security on which money has to be borrowed, and they ought to be fixed definitely by an inspector, to avoid delay and uncertainty of appeal, *ib.* 2627–2703, 2779——It is expected that 100,000 *l.* will have to be spent on river, *ib.* 2695,2696.

Commissioners have power to buy up mills, make new cuts, and do everything necessary for protection from floods, *ib.* 2660, 2663, 2676——The district boards are under the control of main boards, so that they cannot injure each other or the arterial channel, *Grantham* 859; *Denton* 2725, 2773–2776.

The fault of the Act is that works to be done and rates were not clearly defined in it; a body was set up to do something at an unknown expense, *Hawkshaw* 2822, 2823——There will be difficulty about the rates, *ib.* 2822——Each district has to get consent of main boards to its proposed work, and there is an appeal to the Board of Trade, which may cause delay, *ib.* 2824, 2825.

Report, 1877—*continued.*

Tide. Effect of tidal locks, *Rawlinson* 203——The tidal floods in London could easily be prevented by embanking, *ib.* 211, 215——They have been much higher since the removal of old London Bridge, *ib.* 216; but have not been affected by the Thames Embankment, *ib.* 217.

On the Nene there is considerable conflict between the upper and lower proprietors, the former oppose the stream being deepened less the additional flow of tide upwards make the water brackish, and they require it for cattle and irrigation, *Percival* 1005, 1006, 1050.

Opinion that though improvement in the Severn below Gloucester would let up the tide quicker, no damage would be done as the tide flows only two hours, whilst it ebbs ten, *Williams* 1656-1659——On the Witham the tide runs up to Boston, it is there stopped by the grand sluice, that sluice holds up the water as far as Lincoln as there is very little fall, but if it were removed the tide would run up further, and the water would be brackish, and at high tides there would be worse floods than now, *Tweed* 1973–1982.

Height of tide very much affects floods on the lower Don, *Brundell* 1139——Tidal water brings up a valuable deposit, *ib.* 1163.

Tolls. The tolls on the Severn are now again increasing, *Williams* 1616——In some cases improvement in the rivers would produce increased tolls from navigation; on the Warwickshire Avon witness thinks they would pay for the outlay incurred, *ib.* 1630–1633——If the through navigation from the Thames to Gloucester were finished and kept inorder, tolls would be considerable, and keeping the river clear for navigation would be the best preventive against floods, *Taunton* 2225.

See also *Navigation.*

Towns. Under the Act of 1861, no rates can be levied on towns, *Peel* 341; *Coote* 636——Witness believes that in many cases they would be willing to contribute without being compelled when the works are advantageous to them, *Peel* 342——Should be compelled to contribute to general river rates, *Rawlinson* 188; *Coote* 624; *Grantham* 888-890; *Brundell* 1143, 1144, 1194; *Tarbotton* 1224, 1258; *Tweed* 1929; *Hawkins* 2706.

Public Health Act does not extend to river works, *Grantham* 881——It should be amended so as to include works for prevention from floods, *ib.* 870–874.

Conclusion of the Committee that towns should contribute to expense of arterial drainage, *Rep.* vi.

Trent. Floods in the valley of the Trent, *Peel* 311——This river is very liable to floods, especially near Nottingham, *Tarbotton* 1198——Great damage has frequently been done to the town, *ib.* 1199–1203——The Corporation have done all they can within their limits to mitigate these floods, but a wider authority could have executed much more effective works, *ib.* 1209-1215——They have obtained Parliamentary power to require that meadows should be raised before being built upon, *ib.* 1209——They have pulled down the old Trent Bridge, and erected a new one, which has reduced the level of the water above the bridge by eighteen inches, *ib.* 1212——They have dredged the river, widened it, and banked it with stone, *ib.* 1213——Bridges at Burton are a great cause of flood there, *ib.* 1243, 1244.

The Navigation Company is the only body having authority in the river, and though their traffic is diminished by the railway competition, they paid a dividend of seven per cent. till last year, and five per cent. then, *ib.* 1302, 1304-1308——This navigation is a decided check on the railway charges, *Tarbotton* 1235; *Furley* 1331; though the number of boats employed has diminished, more would be put on if the charges of railway were raised, *ib.* 1360——If the river bed were deepened (and the navigation is bound to keep thirty-six inches of water, though they do not, *ib.* 1315) charges between Hull and Nottingham could be diminished by one-half, *ib.* 1356——The weirs on this river materially increase floods, *Tarbotton* 1232, 1283, but the navigation could not go on without them, *ib.* 1233, therefore they ought to be altered so as to be no obstruction in time of flood, and be placed under the control of Conservancy authority, so that the flood-gates might be opened on first warning of flood, *ib.* 1284–1286.

General Conservancy Board should be appointed for whole drainage of area of river, *ib.* 1217; with power to execute works on the whole length of it, and to rate firstly, whole area, including uplands, according to the poor-rate assessment, *ib.* 1218-1223, 1226; and secondly, special districts according to the direct benefit they derive from the works, *ib.* 1224–1226——Towns should be included in jurisdiction and rating, *ib.* 1224, 1258.

Contrary opinion, that works to save Burton from floods could be executed so as not to injure any other place, *Hawkshaw* 2830–2836.

Tributary Streams. Jurisdiction of authority on main river should extend to the tributaries, *Abernethy* 413–499; *Coote* 616; *Brundell* 1127; *Tarbotton* 1264; *Bartholomew* 1711,

Report, 1877—*continued.*

Tributary Streams—continued.

1711, 1712; *Tebbutt* 2048——Should be under district boards subordinate to main river board, *Ridley* 55, 82; *Grantham* 858.

Should each be under a different board, with an appeal in case of difference——Opinion that they would not clash, *Hawkins* 2705, 2725-2731; there should be a central board besides in each river valley, *ib.* 2751-2753.

The various tributaries of the Humber should be under different boards, *Bartholomew* 1752; *Macturk* 2142; *Mills* 2338——Should be under different boards, but they should send representatives to form a supreme authority, and to manage the estuary, *Denton* 2493-2497.

Conclusion of the Committee that in certain cases tributary streams should be under the management of district committees (under the Conservancy Board); and in some cases the tributary might be of such importance as to require a Conservancy Board of its own, and in this case there should be some authority to decide differences between these co-ordinate Boards, *Rep.* v.

Tweed, Mr. John Thomas. (Analysis of his Evidence.)—Is Town Clerk of the City of Lincoln, and connected with the Witham Navigation, 1865, 1867——The floods at Lincoln are excessively serious and injurious both to health and property, 1870-1874, and increasing, 1950——The city of Lincoln is agitating for improvement of the drainage of the district, 1881-1886, 1897; and the subject urgently requires to be dealt with, 1983.

The divided jurisdictions on the river prevent any effective works being carried out; there are constant disputes; the works are in very bad repair, and the taxation is very heavy, on account of the numerous officers required by the many authorities, 1888-1893——The keeping up of the navigation, which is now quite useless, aggravates floods, 1935-1947; as also does the improved land drainage, 1951.

Recommends that all the small jurisdictions be abolished, 1959, and that the whole river from beginning to end be placed under one authority, 1903, viz., a board elected by the owners and occupiers of the area in large electoral districts, 1961-1964; raising rates from the lands benefited in the proportion of benefit received, and also in a less degree from the uplands that send down water to be carried off, 1911-1915. 1952.

The river would have to be enlarged, and some new cuts made, 1955; the damage is so great, that considerable expenditure could be borne, 1956.

Prefers a special Private Act of Parliament for the district to a Provisional Order system, as the interests are very complicated, and the rating powers should be special and extensive, 1967-1972.

U.

Uplands and Upper Proprietors. Uplands should be taxed as well as lands in the valley, as they now send down the water which has to be got rid of in greater quantities owing to improved agricultural drainage, and the rivers serve as their main drain, *Peel* 350, 379; *Abernethy* 423, 426, 442, 523 *et seq.*; *Coote* 620; *Tarbotton* 1222; *Tweed* 1913, 1952; *Tebbutt* 2021 *et seq.*; *Denton* 2498, 2499, 2511; *Hawkshaw* 2794-2797, 2810.

Should not be rated, *Williams* 1620; *Mills* 2316; *Hawkins* 2747, 2748——Ought not to be rated unless they do new works which send down more water, as low lands have been bought proportionately cheaper on account of the liability to floods, *Macturk* 2122-2124.

In some cases where rivers sink in porous ground, the upper owners who drain into them do service, and must not be confounded with others who drain into it where there are floods, *Taunton* 2242, 2243.

The proportion to be borne by uplands should be set out in Act forming district, *Coote* 622——A fair proportion of taxation for uplands would be one-twelfth of rate on flooded lands, *ib.* 622-629——They would be represented on the board to that extent, *ib.* 630——Opinion that one to ten is the fair proportion, *Tebbutt* 2041.

Recommendation of Committee that uplands should be rated according to rateable value, but in a less proportion than lands subject to floods, *Rep.* vi.

V.

Value of Land. Value of flooded land compared with unflooded, *Lloyd* 1484 *et seq.*——In Ireland land where the Drainage Acts have been applied has increased on an average one-third in value, *Roberts* 705.

For opinions as to rating according to increase of value of land by drainage works, see *Benefit.*

See also *Rateable Value.* *Rent.*

Vermuyden, Sir Cornelius. Description of works in the Ouse Valley carried out by this Dutch engineer between the years 1638 and 1652; a cut (the old Bedford River) was made from Earith to Denver Sluice, twenty-one miles in a quite straight line; this was found insufficient, and a second cut, the New Bedford or Hundred Foot River, was made parallel to but at some distance from the first; embankments were placed on the outer side of each of these two cuts, and the space between, about 5,000 acres, was left as a broad upper flood channel. This scheme answered very well till the proprietors of these washlands put up a bank across them, *Peel* 307, 308; *Abernethy* 398-400; *Tebbutt* 2007, 2008.

Voluntary Action. Opinions that question of dealing with floods should be left to voluntary action, *Earl of Malmesbury* 2620, 2638-2640; *Hawkshaw* 2798, 2852, 2864, 2870.

W.

Washlands. Name given to certain low lands in the valley of the Ouse, between the Old and New Bedford rivers, over which it was intended that the floods should flow, *Peel* 307; *Abernethy* 398–400——These have been obstructed by the erection of a bank, *ib.* 400; *Tebbutt* 2007.

Witness recommends that rivers subject to floods should be embanked at some distance from the watercourse, leaving low meadows to serve as a channel for flood waters, *Abernethy* 475 *et seq.*——These meadows would remain the private property of the previous owners, but they must not interfere with them (by planting fencings), *ib.* 564, 565, 574——Witness regrets that the embankments on the Witham were not placed at some distance from the banks instead of upon them, that washlands might have been left, over which floods might have flowed harmlessly, *White* 1790——Embankments need not necessarily be adjacent to the river, they may be some way off, leaving washlands, *Rawlinson* 185 *et seq.*, 227.

Water Companies. Should contribute to improvements in rivers in cases where they take water from them, *Rawlinson* 265–268——Those companies that take water from the Lee contribute a yearly sum not exceeding 1,000 *l.* to the Conservancy Board to be applied in prevention of pollution, *Corble* 1407 *et seq.*; 1426.

Watersheds. The division into Conservancy Boards should be by watersheds, *Ridley* 51, 54-58; *Rawlinson* 182; *Peel* 331; *Abernethy* 422, 529; *Coote* 617; *Roberts* 752, 754; *Grantham* 820, 832 *et seq.*; *Tarbotton* 1215, 1256; *Bartholomew* 1692, 1729; *Tebbutt* 2013 *et seq.*, 2031; *Denton* 2493–2497——Agreement of the Committee in this opinion, *Rep.* v.

Water Supply. Water from wells used to be the best; owing to pollution and chemical manures it is now very dangerous, *Denton* 2451–2453, 2483, 2490–2492——Sometimes a double supply of well water and pure water can be advantageously managed; instance at Shrewsbury, *ib.* 2455——Instance on the Lea of sewage being turned into the river (whence part of London is supplied with drinking water), owing to restricted jurisdiction of Conservancy Board, *ib.* 2499-2503.

Water can often be let down by shafts through impervious soil to water-holding strata, and from thence in other districts the water filtered by passing through the soil can be obtained by wells, *Taunton* 2180, 2187, 2194; *Denton* 2461, 2462, 2471–2476.

See also *Reservoirs Bill.* *Storage of Water.*

Weirs. Often increase floods, especially as they are often of bad construction and without flood-gates, *Peel* 319; *Grantham* 810; *Brundell* 1170, 1171; *Tarbotton* 1232, 1283–1287; *Child* 1397–1400; *Lloyd* 1470; *Williams* 1662; *Mills* 2370–2373.

Make no appreciable difference to severe floods; they may affect small districts, and do

Weirs—continued.

do harm by waterlogging land above them, *Rawlinson* 174-179, 198-202——Impede flow of flood water, *Williams* 1646; *Taunton* 2217 *et seq.*

Should be done away with, *Lloyd* 1509.

Should be placed under regulation, and millers not allowed to encroach, *Peel* 319, 354; *Rawlinson* 280; *Grantham* 894——Should be retained, but enlarged and improved, *Abernethy* 475; *Grantham* 810-816——If they were done away with, there would be great drought in summer, *Rawlinson* 202; *Abernethy* 542, 553; *Coote* 645——If weirs were removed, the navigation would be destroyed, *Tarbotton* 1233; and that navigation exercises a wholesome check on railway charges, *ib.* 1235; they should be altered, so as not to be an obstruction, and placed under the control of an authority that would open them before impending floods, *ib.* 1286.

On the Lee, iron posts five inches wide have been substituted for wooden posts eighteen inches wide in the weirs, and they have lifting gates, and the flood-water is passed off quickly and easily, *Child* 1397——Witness thinks great benefit would be derived in other rivers if this were done generally, *ib.* 1399——Weirs should be self-acting when the water reaches a certain height, *Coote* 646——Should be made so as to fall perfectly flat in time of floods, *Brundell* 1170; it is especially important that this should be done at the beginning of floods, *ib.* 1170——Weirs of a new principle have been erected on the Severn, which materially aid the flow of water; the water in flood time is level over them long before it reaches the level of the bank, *Williams* 1646 *et seq.*

See also *Locks.* *Mills.*

White, Mr. Francis Thirkill. (Analysis of his Evidence.)—Has been Clerk to the General Commissioners of the River Witham since the year 1842; 1753, 1754——That Commission has jurisdiction over the Witham from Boston to Lincoln, about half the whole length of the river, 1759, 1846-1852.

Their main district is divided into six smaller districts, and these again sub-divided into several sub-districts; this was done by the first Act passed in 1762; 1799, 1817-1822——For each sub-division there are separate Commissioners doing local works and raising rates in their own district, as well as the general Commission taking care of the main works, and raising a rate on the whole area, 1828-1833——The rates are equal acreage rates for each parish, but the maximum rate allowed by Parliament varies in different parishes from 1 *s.* 6 *d.* to 2 *s.* 6 *d.*, 1838-1842.

The Commission has worked very well, 1795, and has executed important works under the original Acts, beginning with the year 1762, and under the Acts of 1865 and 1867 important pumping works, &c., were put up under the direction of Sir John Hawkshaw, which have proved very efficacious in the east fen, 1782; the Commission has, in fact, to a great degree prevented floods, as far indeed as is possible with the present size of the river, 1789, 1790——The floods are still considerable, 1791; but they principally occur at Lincoln, and are due to the fact that the Commissioners consider themselves bound under their Act to consult the interests of the land on the lower river, and hold up the water above their jurisdiction at Lincoln, 1853-1862——In dry seasons, by holding up water, they are enabled to supply water for the use of cattle over the fens, 1843-1845.

The composition of the Commission (consisting of certain landowners elected by all landowners) could not be improved, 1796.

Williams, Mr. Edward Leader. (Analysis of his Evidence.)—Has been connected with the Severn Navigation as Engineer for upwards of forty years, 1582-1585——The Severn Navigation Commission is composed of thirty representatives of various bodies on or near the river, and its jurisdiction extends from Stourport to Gloucester, 1586-1589——The Commission has executed considerable works for the improvement of the navigation and for quickening the passage of floods; floods on the Severn are very high, and could not altogether be prevented, as the quantity of water brought down from the Welsh hills is so great; if they are passed off quickly, they do good by depositing silt, 1590-1596.

The districts below Gloucester are injured by the greater rapidity with which floods are passed off on to them from above by the works of the Commission, 1598——The Commission only extends down to Gloucester on account of the jealousy of that town, lest it should be robbed of its sea-going traffic, 1626.

The Commission has borrowed large sums on the security of the tolls of the navigation; their income formerly amounted to 14,000 *l.* a year; when the railways in the district were being made, the Commission obtained a guarantee from the Great Western Railway, under which the company now pays them some 6,000 *l.* a year as compensation for the loss of traffic of which it has deprived them, and on the security of which they had

Report, 1877—*continued.*

Williams, Mr. Edward Leader. (Analysis of his Evidence)—*continued.*

raised money by authority of Parliament; their traffic now amounts to 8,000 *l.*, and is increasing, 1601–1617.

Floods on the Severn are very little increased by improved land drainage, or by the tide or bore, as they are principally caused by the quantity of rain water falling on the large mountain area drained by the river, 1608, 1611, 1644.

Witness thinks the jurisdiction of the Commission (which, as far as it goes, has worked most satisfactorily) should be extended over a much larger portion of the river, possibly the whole of it, 1600, 1617, 1641; a few years ago their works were extended from Tewkesbury to Gloucester with the most beneficial results of clearing away the mud banks deposited in that part of the river, 1599; and below Gloucester much could be done by clearing away rocks, &c., and making new cuts where the course of the river is tortuous, 1618, 1619, 1656.

The clearing away of obstacles in the tidal part of the river would facilitate the rising of the tide, but this would not increase floods above, as the ebb of the Severn lasts ten hours to two of flood, 1656–1659.

The River Avon should be under the same jurisdiction; part of that river is entirely neglected, and the rest, on which there is some traffic, requires new and improved weirs, &c., 1630–1633.

The works should be constructed to quicken the passage of floods, as well as to improve the navigation, and in some cases, as on the Avon, the tolls might pay for the whole; in other cases they would pay for part, and the rest must be raised by a rate upon the lands benefited by being freed from floods, 1619–1625, 1629, 1643——The ratepayers should be represented on the Board, 1639.

Witness describes the improved weirs erected on the Severn, 1646 *et seq.*——They actually quicken the flow of flood-water considerably by their peculiar construction as well as by keeping up the water in pools, through which the floods flow quicker than they did over gravelly shallows; in high floods the barges go over these weirs, and the weirs can in no way aggravate floods, as the water is level over them long before it reaches the level of the top of the bank, 1646–1651, 1660, 1664–1668——These weirs are no more expensive than the ordinary ones, and they are self-acting, 1661, 1671——The old-fashioned weirs on the Thames materially obstruct the rapid passing off of floods, 1661–1663.

Witham, River. The river from Boston to Lincoln, about half its total length, is under a body of Commissioners, *White* 1755–1757——They act under various Acts of Parliament, beginning in 1768, *ib.* 1758, both for navigation and drainage purposes, *ib.* 1761 *et seq.*; they have erected a great sluice at Boston to stem the tide and various embankments, *ib.* 1781——In 1865 and 1867, under two Acts, they have erected new pumping stations, which have relieved the east fen of floods, *ib.* 1783——Witness thinks the district is as free from floods as is possible, considering the size of the river; regrets that the embankments were not originally made some distance from the banks, instead of on them, so as to allow of washlands, *ib.* 1789, 1790.

At Lincoln there are serious floods, principally owing to the Commissioners being bound to consider the proprietors below that town, and holding up the water to save them, *ib.* 1853, 1856 *et seq.*——Floods at Lincoln and above it are very serious, and do great damage, *Tweed* 1870 *et seq.*; 1983——The district above Lincoln is under a Commission of Sewers, *ib.* 1877, but they have no power to send down the water into the Witham Commission below Lincoln, *ib.* 1879——The town of Lincoln at present contributes nothing, but the loss it sustains by floods would make it worth its while to pay largely for their prevention, *ib.* 1930, 1956——The navigation that has to be kept up on the Lower Witham is quite useless, and ought to be abolished, *ib.* 1935–1947——The number of small drainage districts that exist below Lincoln ought to be abolished; and the whole drainage area of the Witham from end to end placed under one Commission, *ib.* 1889, 1959 *et seq.*; with power to rate the whole district on a sliding scale, either according to benefit derived, or according to height above river, *ib.* 1911, 1912; and also the uplands that send down the water faster than formerly, *ib.* 1913, 1953.

Witness thinks this should be done by a special Private Act; the complicated interests could better be dealt with in this way than by a Provisional Order under a General Act, *ib.* 1967 *et seq.*

The whole river should be under one body of Commissioners, *Hawkshaw* 2827——Witness has prepared a scheme for dealing comprehensively with the whole river, *ib.* 2788 *et seq.*; 2849, 2876.

Wye, River. Is under various Acts of Parliament, *Lloyd* 1437 *et seq.*——In 1695, Navigation Trustees were authorised to raise 5,000 *l.* a year for five years, for the improvement of the river; they purchased and pulled down weirs and mills, and dredged the bed, *ib.* 1448–1450——The Navigation Trustees still nominally exist, but in 1805 they were

Report, 1877—*continued.*

Wye, River—continued.

were practically superseded by a Towing-path Company, *Lloyd* 1439-1443; which dissolved itself on the formation of the railway from Hereford to Gloucester, *ib.* 1445——There is now no navigation to speak of on the river, *ib.* 1456.

There are frequent floods on the Wye; but witness is of opinion they are unavoidable from the great extent of hills drained by the river, *ib.* 1457, 1539; but the whole length of the river including its tributary, the Lug, should be placed under one Conservancy Board, *ib.* 1460, 1495, 1497; which might be elected from the boards of guardians, and courts of quarter sessions and city authorities, *ib.* 1498, with power to buy up mills and weirs, *ib.* 1509, and attend to the purity of the river, *ib.* 1516——A penny rate over the whole catchment area of about a million acres would probably be sufficient, *ib.* 1523-1527, 1577 *et seq.*

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REPORT

FROM THE

SELECT COMMITTEE

ON

COUNTY OFFICERS AND COURTS (IRELAND) BILL;

WITH THE

PROCEEDINGS OF THE COMMITTEE.

Ordered, by The House of Commons, *to be Printed,*
17 *July* 1877.

Friday, 22*nd June* 1877.

COUNTY OFFICERS AND COURTS (IRELAND) BILL read a second time, and committed to a Select Committee.

Friday, 29*th June* 1877.

Ordered, THAT the Select Committee do consist of Nineteen Members.

Committee nominated of—

Sir Michael Hicks Beach.
Mr. George Beresford.
Mr. Biggar.
Mr. Close.
Mr. Downing.
Mr. David Plunket.
Mr. Meldon.
Mr. O'Shaughnessy.
Mr. Goulding.
Mr. Macartney.
Mr. King-Harman.
Mr. Law.
Sir Colman O'Loghlen.
Mr. Parnell.
Mr. Lowry Corry.
Mr. Shaw.
Mr. Serjeant Sherlock.
Mr. Wilson.
Mr. Attorney General for Ireland.

Ordered, THAT Five be the Quorum of the Committee.

Monday, 9*th July* 1877.

Ordered, THAT the Select Committee do consist of Twenty-one Members.

Ordered, THAT Mr. *Butt* and Mr. *Charles Lewis* be added to the Committee.

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REPORT.

THE SELECT COMMITTEE to whom the COUNTY OFFICERS AND COURTS (IRELAND) BILL was referred, have gone through the Bill, and made Amendments thereunto.

17 *July* 1877.

PROCEEDINGS OF THE COMMITTEE.

Monday, 2nd July 1877.

MEMBERS PRESENT:

Mr. George Beresford.	Mr. King-Harman.
Mr. Lowry Corry.	Mr. Goulding.
Sir Colman O'Loghlen.	Mr. Attorney General for Ireland.
Mr. Downing.	Mr. David Plunket.
Mr. Parnell.	Sir Michael Hicks Beach.
Mr. O'Shaughnessy.	

Mr. ATTORNEY GENERAL FOR IRELAND was called to the Chair.

The Committee deliberated.

[Adjourned till To-morrow, at Twelve o'clock.

Tuesday, 3rd July 1877.

MEMBERS PRESENT:

Mr. ATTORNEY GENERAL FOR IRELAND in the Chair.

Mr. King-Harman.	Mr. Downing.
Mr. Goulding.	Sir Colman O'Loghlen.
Mr. Lowry Corry.	Mr. David Plunket.
Mr. George Beresford.	Mr. Wilson.
Mr. Macartney.	Sir Michael Hicks Beach.

Preamble *postponed.*

Clauses 1 and 2, *agreed to.*

Clause 3, *postponed.*

Clauses 4 and 5, *agreed to.*

Clause 6, *postponed.*

Clause 7, *agreed to.*

Clause 8, *postponed.*

Clause 9, amended, and *agreed to.*

Clause 10.—Amendment proposed, to leave out from the word "peace," in line 12, to the word "peace," in line 16—(Mr. *Downing*).—Question put, That the words proposed to be left out stand part of the Clause.—Question put.—The Committee divided:

Ayes, 4.	Noes, 6.
Mr. David Plunket.	Mr. Wilson.
Sir Michael Hicks Beach.	Mr. Lowry Corry.
Mr. King-Harman.	Mr. Goulding.
Sir Colman O'Loghlen.	Mr. George Beresford.
	Mr. Macartney.
	Mr. Downing.

Clause further amended, and *agreed to.*

Clauses 11 and 12, *agreed to.*

Clause

Clause 13, amended, and *agreed to.*

Clauses 14 and 15, *postponed.*

Clauses 16 and 17, *agreed to.*

Clause 18, amended, and *agreed to.*

[Adjourned till Friday next, at Twelve o'clock.

Friday, 6th July 1877.

MEMBERS PRESENT:

Mr. Attorney General for Ireland in the Chair.

Mr. George Beresford.	Mr. Wilson.
Mr. Goulding.	Mr. Biggar.
Mr. Macartney.	Mr. Parnell.
Mr. Downing.	Mr. O'Shaugnessy.
Mr. Close.	Sir Michael Hicks Beach.
Mr. Lowry Corry.	Mr. David Plunket.
Sir Colman O'Loghlen.	Mr. King-Harman.

Clauses 19—24, amended, and *agreed to.*

Clause 25, *postponed.*

Clause 26, *agreed to.*

Clauses 27 and 28, amended, and *agreed to.*

Clause 29, Amendment proposed in Sub-section (*a*), line 37, to leave out "three," in in order to insert "five"—(Mr. *Downing*),—instead thereof.—Question put, That "three" stand part of the Clause.—The Committee divided:

Ayes 3.	Noes 11.
Mr. David Plunket.	Mr. Wilson.
Sir Michael Hicks Beach.	Mr. Goulding.
Mr. King-Harman.	Mr. George Beresford.
	Mr. Macartney.
	Mr. Downing.
	Mr. Close.
	Mr. Lowry Corry.
	Mr. Parnell.
	Sir Colman O'Loghlen.
	Mr. Biggar.
	Mr. O'Shaughnessy.

"Five" inserted.—Other Amendments made.—Clause, as amended, *agreed to.*

Clause 30, amended, and *agreed to.*

Clauses 31—38, *agreed to.*

Clause 39, *postponed.*

Clause 40, *agreed to.*

Clause 41, *postponed.*

Clause 42, amended, and *agreed to.*

Clauses 43—48, *agreed to.*

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 10*th July* 1877.

MEMBERS PRESENT:

Mr. ATTORNEY GENERAL FOR IRELAND in the Chair.

Mr. Law.	Mr. Lowry Corry.
Mr. King-Harman.	Mr. Macartney.
Mr. George Beresford.	Mr. Close.
Mr. Downing.	Mr. Meldon.
Mr. David Plunket.	Mr. Wilson.
Mr. Shaw.	Sir Michael Hicks Beach.
Sir Colman O'Loghlen.	Mr. Butt.
Mr. O'Shaughnessy.	Mr. Charles Lewis.
Mr. Serjeant Sherlock.	Mr. Parnell.

Clauses 49 and 50, amended, and *agreed to.*

Clause 51—Amendments made.—Question put, That the Clause, as amended, stand part of the Bill.—The Committee divided:

Ayes, 12.	Noes, 4.
Mr. Wilson.	Mr. Macartney.
Mr. Close.	Mr. Downing.
Mr. Lowry Corry.	Mr. Butt.
Mr. George Beresford.	Sir Colman O'Loghlen.
Mr. Law.	
Sir Michael Hicks Beach.	
Mr. King-Harman.	
Mr. Shaw.	
Mr. O'Shaughnessy.	
Mr. Serjeant Sherlock.	
Mr. Meldon.	
Mr. David Plunket.	

Clauses 52—56, *agreed to.*

Clauses 57 and 58, amended, and *agreed to.*

Clause 59, *agreed to.*

Clauses 60 and 61, *postponed.*

Clause 62.—Question put, That this Clause stand part of the Bill.—The Committee divided:

Ayes, 13.	Noes, 4.
Mr. Wilson.	Mr. Downing.
Mr. Close.	Mr. Butt.
Mr. Macartney.	Sir Colman O'Loghlen.
Mr. Lowry Corry.	Mr. Meldon.
Mr. George Beresford.	
Mr. Law.	
Sir Michael Hicks Beach.	
Mr. King-Harman.	
Mr. Shaw.	
Mr. O'Shaughnessy.	
Mr. Serjeant Sherlock.	
Mr. David Plunket.	
Mr. Charles Lewis.	

Clause 63, *agreed to.*

Clauses 64 and 65, amended, and *agreed to.*

Clause 66, *agreed to*

Clause 67, *disagreed to.*

Clause 68, *agreed to.*

Clause 69, amended, and *agreed to.*

Clause 70, *agreed to.*

Clause 71.—Amendment proposed, to leave out all the words from the beginning of the Clause to the first word "and," in line 19—(Mr. *Butt*).—Question put, That the words proposed to be left out stand part of the Clause.—The Committee divided:

Ayes, 10.	Noes, 3.
Mr. Wilson.	Mr. Butt.
Mr. Macartney.	Mr. Serjeant Sherlock.
Mr. Lowry Corry.	Mr. Parnell.
Mr. Law.	
Mr. Downing.	
Mr. King-Harman.	
Mr. Shaw.	
Sir Colman O'Loghlen.	
Mr. Meldon.	
Mr. Charles Lewis.	

Clause *agreed to.*

Clause 72, *agreed to.*

Clause 73, *postponed.*

Clause 74.—Amendments made.—Amendment proposed, in line 40, after the word "courts," to insert the words "and to sheriffs for the execution of the decrees or orders of the Civil Bill Courts"—(Mr. Serjeant *Sherlock*).—Question, That those words be there inserted,—put, and *negatived.*—Clause, as amended, *agreed to.*

Clause 76, amended, and *agreed to.*

[Adjourned till To-morrow, at Twelve o'clock.

Wednesday, 11th July 1877.

MEMBERS PRESENT:

Mr. ATTORNEY GENERAL FOR IRELAND in the Chair.

Mr. Law.	Mr. David Plunket.
Mr. George Boresford.	Mr. Meldon.
Mr. Serjeant Sherlock.	Mr. Wilson.
Mr. Downing.	Mr. Lowry Corry.
Mr. King-Harman.	Mr. Charles Lewis.
Mr. Shaw.	Mr. Close.
Sir Colman O'Loghlen.	Sir Michael Hicks Beach.
Mr. Butt.	Mr. Parnell.
Mr. Macartney.	Mr. O'Shaughnessy.

Clauses 77 and 78, *agreed to.*

Clause 79, amended, and *agreed to.*

Clause 80.—Amendment proposed, at the end of the Clause, to leave out the words "notary public, solicitor, or attorney"—(Mr. Serjeant *Sherlock*).—Question put, That the words proposed to be left out stand part of the Clause.—The Committee divided:

Ayes, 10.	Noes, 4.
Mr. Wilson.	Mr. Downing.
Mr. Close.	Mr. Meldon.
Mr. Macartney.	Sir Colman O'Loghlen.
Mr. Lowry Corry.	Mr. Serjeant Sherlock.
Mr. George Beresford.	
Sir Michael Hicks Beach.	
Mr. Butt.	
Mr. King-Harman.	
Mr. David Plunket.	
Mr. Shaw.	

Question put, That this Clause, as amended, stand part of the Bill.—The Committee divided:

Ayes, 12.	Noes, 5.
Mr. Wilson.	Mr. Close.
Mr. Macartney.	Mr. Law.
Mr. Lowry Corry.	Mr. Downing.
Mr. George Beresford.	Mr. Serjeant Sherlock.
Sir Michael Hicks Beach.	Mr. Meldon.
Mr. Butt.	
Mr. King-Harman.	
Mr. Shaw.	
Sir Colman O'Loghlen.	
Mr. David Plunket.	
Mr. Charles Lewis.	
Mr. Parnell.	

Several postponed Clauses, amended, and *agreed to.*

Postponed Clause 39.—Question put, That this Clause stand part the Bill.—The Committee divided:

Ayes, 14.	Noes, 3.
Mr. Wilson.	Mr. Shaw.
Mr. Close.	Sir Colman O'Loghlen.
Mr. Macartney.	Mr. Parnell.
Mr. Lowry Corry.	
Mr. George Beresford.	
Mr. Law.	
Sir Michael Hicks Beach.	
Mr. Butt.	
Mr. King-Harman.	
Mr. Serjeant Sherlock.	
Mr. Meldon.	
Mr. David Plunket.	
Mr. Charles Lewis.	
Mr. Downing.	

Other postponed clauses, amended, and *agreed to.*

Postponed Clause 73, *disagreed to.*

New Clause (Title of the Chairman)—(Sir *Colman O'Loghlen*)—brought up and read the first time.—Question put, That this Clause be now read a second time.—The Committee divided:

Ayes, 11.	Noes, 5.
Mr. Close.	Mr. Wilson.
Mr. Macartney.	Mr. Lowry Corry.
Mr. George Beresford.	Mr. Butt.
Mr. Law.	Mr. David Plunket.
Sir Michael Hicks Beach.	Mr. Charles Lewis.
Mr. Downing.	
Mr. King-Harman.	
Mr. Shaw.	
Sir Colman O'Loghlen.	
Mr. Serjeant Sherlock.	
Mr. Meldon.	

Clause *added.*

[Adjourned till Friday next, at Twelve o'clock.

Friday, 13th July 1877.

MEMBERS PRESENT:

Mr. ATTORNEY GENERAL FOR IRELAND in the Chair.

Mr. Law.	Sir Colman O'Loghlen.
Mr. George Beresford.	Mr. Shaw.
Mr. King Harman.	Mr. Downing.
Mr. Serjeant Sherlock.	Mr. Butt.
Mr. Wilson.	Mr. Meldon.
Mr. David Plunket.	Sir Michael Hicks Beach.
Mr. Close.	Mr. Macartney.
Mr. Biggar.	Mr. Charles Lewis.

Several

Several new Clauses *added.*

New Clause (Fixing the collection of fees)—(The *Chairman*)—brought up and read the first time.—Question put, That this Clause be now read a second time—The Committee divided:

Ayes, 9.	Noes, 4.
Mr. Wilson.	Mr. Butt.
Mr. Close.	Sir Colman O'Loghlen.
Mr. George Beresford.	Mr. Meldon.
Mr. Law.	Mr. Biggar.
Sir Michael Hicks Beach.	
Mr. Downing.	
Mr. King-Harman.	
Mr. Shaw.	
Mr. Serjeant Sherlock.	

Amendment made.

Another Amendment proposed, to leave out sub-sections 7, 8, and 9—(Mr. *Shaw*).—Question put, That the words, "The Treasury shall keep such separate accounts," stand part of the Clause.—The Committee divided:

Ayes, 11.	Noes, 5.
Mr. Wilson.	Mr. Shaw.
Mr. Close.	Mr. Macartney.
Mr. George Beresford.	Mr. Butt.
Mr. Law.	Mr. Biggar.
Sir Michael Hicks Beach.	Mr. Meldon.
Mr. Downing.	
Mr. King-Harman.	
Sir Colman O'Loghlen.	
Mr. Serjeant Sherlock.	
Mr. David Plunket.	
Mr. Charles Lewis.	

Another Amendment proposed, at the end of the Clause, to add the words, "Provided always, that no orders made under the authority of this section, fixing any fees to be paid by suitors, shall continue or be in force longer than the 1st day of January 1881"—(Mr. *Butt*).—Question put, That those words be there added.—The Committee divided:

Ayes, 6.	Noes, 10.
Mr. Downing.	Mr. Wilson.
Mr. Butt.	Mr. Close.
Mr. Shaw.	Mr. Macartney.
Sir Colman O'Loghlen.	Mr. George Beresford.
Mr. Meldon.	Mr. Law.
Mr. Biggar.	Sir Michael Hicks Beach.
	Mr. King-Harman.
	Mr. Serjeant Sherlock.
	Mr. David Plunket.
	Mr. Charles Lewis.

Clause, as amended, *added.*

Another new Clause *added.*

[Adjourned till Monday next, at Twelve o'clock.

Monday, 16*th July* 1877.

MEMBERS PRESENT:

Mr. ATTORNEY GENERAL FOR IRELAND in the Chair.

Mr. Law.	Mr. Close.
Mr. George Beresford.	Mr. Shaw.
Mr. Serjeant Sherlock.	Mr. O'Shaughnessy.
Mr. Wilson.	Mr. Downing.
Mr. David Plunket.	Mr. Butt.
Mr. Macartney.	Mr. Meldon.
Sir Colman O'Loghlen.	Sir Michael Hicks Beach.

Another new Clause *added.*

New Clause brought up, and read the first time, as follows: "It shall be lawful for any recorder, or other county court judge, upon the trial of any civil bill or equity case, to direct a special case to be stated for the opinion of a Division of the High Court of Justice in case any question of law or equity shall arise before him on the trial of a civil bill or equity case, which, in his judgment, may be proper to be decided by the High Court of Justice; and the case, when stated, shall be signed by the recorder or other county court judge before whom the civil bill or equity case shall come; and the appellant shall lodge the case, and take all other necessary steps to have the case set down for hearing before a Division of the High Court of Justice within such time as any general order to be made under this Act shall require, and, in defult of his doing so, the decree shall stand affirmed with costs, unless on special application one of the judges of a Division of the High Court of Justice shall otherwise order"—(Sir *Colman O'Loghlen*).—Question put, That this Clause be now read a second time.—The Committee divided:

Ayes, 3.	Noes, 9.
Mr. Butt.	Mr. Wilson.
Mr. Shaw.	Mr. Close.
Sir Colman O'Loghlen.	Mr. Macartney.
	Mr. Geerge Beresford.
	Mr. Law.
	Mr. Downing.
	Mr. O'Shaughnessy.
	Mr. Serjeant Sherlock.
	Mr. David Plunket.

Another new Clause brought up, and read the first time, as follows: "It shall be lawful for the Lord Lieutenant, with the concurrence of the Lord Chancellor and of the Treasury, to grant to any chairman, appointed before the passing of this Act to a first class county, who shall show, to the satisfaction of the Lord Lieutenant and the Treasury, that the discharge of the additional duties imposed upon him by this Act will deprive him of professional emoluments which, if this Act had not been passed, he would have received, such special salary while he shall hold office not exceeding 300 *l.* a year, as, having regard to the circumstances of each case, shall to the Lord Lieutenant and the Treasury appear just and reasonable: Provided always that any chairman accepting such special salary shall be disqualified from practising at the bar in the same manner as a chairman appointed after the passing of this Act will be: and provided also that such special salary shall not be taken into account in computing the amount of pension payable to any chairman who may accept the same"—(Sir *Colman O'Loghlen*).—Question put, That this Clause be now read a second time.—The Committee divided:

Ayes, 4.	Noes, 8.
Mr. Macartney.	Mr. Wilson.
Mr. Downing.	Mr. Close.
Mr. Serjeant Sherlock.	Mr. George Beresford.
Sir Colman O'Loghlen.	Mr. Law.
	Mr. Butt.
	Mr. Shaw.
	Mr. O'Shaughnessy.
	Mr. David Plunket.

Another new Clause *added.*

Another new Clause (Removal of proceedings to superior Court)—(Mr. *Butt*),—brought up and read the first time.—Question put, That this Clause be now read a second time.—The Committee divided:

Ayes, 6.	Noes, 6.
Mr. Law.	Mr. Wilson.
Mr. Butt.	Mr. Close.
Mr. Shaw.	Mr. Macartney.
Mr. Serjeant Sherlock.	Mr. George Beresford.
Mr. Meldon.	Mr. Downing.
Mr. David Plunket.	Sir Colman O'Loghlen.

Whereupon the Chairman declared himself with the *Ayes.*

Amendments made.

Question put, That this Clause, as amended, be added to the Bill.—The Committee divided:

Ayes, 8.	Noes, 5.
Mr. Law.	Mr. Wilson.
Sir Michael Hicks Beach.	Mr. Close.
Mr. Butt.	Mr. Macartney.
Mr. Shaw.	Mr. George Beresford.
Mr. O'Shaughnessy.	Sir Colman O'Loghlen.
Mr. Serjeant Sherlock.	
Mr. Meldon.	
Mr. David Plunket.	

Other

Other new Clauses *added.*

Another new Clause brought up, and read the first time, as follows:

"As soon as the number of Chairmen shall be, under this Act, reduced to 21, Chairmen shall interchange their counties or unions of counties, so that no Chairman shall sit or act as a Chairman of a county, or union of counties, for more than five years consecutively.

"The Lord Lieutenant, by and with the advice and consent of the Privy Council in Ireland, shall, from time to time, make rules and regulations for carrying out this provision, and shall frame a rota of counties and Chairmen, so as to provide that every Chairman shall be changed from county to county, or to unions of counties, at least once in every five years.

"Nothing in this section contained shall apply to recorders of cities or towns, or to a Chairman appointed before the passing of this Act"—(Sir *Colman O'Loghlen*).—Question put, That this Clause be now read a second time.—The Committee divided:

Ayes, 5.	Noes, 7.
Mr. Macartney.	Mr. Wilson.
Mr. George Beresford.	Sir Michael Hicks Beach.
Mr. Shaw.	Mr. Downing.
Mr. Colman O'Loghlen.	Mr. Butt.
Mr. O'Shaughnessy.	Mr. Serjeant Sherlock.
	Mr. Meldon.
	Mr. David Plunket.

Another new Clause brought up, and read the first time, as follows:

"It shall be lawful for the party to the suit or other proceeding in any civil bill court, or for an attorney of one of Her Majesty's superior courts at Dublin, being the attorney on record for such party, or for an attorney retained as an advocate by such first-mentioned attorney, or for a barrister retained by or on behalf of such party (parties may employ two attornies), but without any right of exclusive audience or pre-audience, or by leave of the judge for any other person allowed by him to appear instead of the party, to appear and address the court and conduct the case, but subject to such rules and regulations as may from time to time be prescribed for the orderly transaction of the business of the court; provided, however, that wherever a second attorney may be so retained the cost of the attorney on record shall only be taxed againt the unsuccessful party"—(Mr. *Downing*).—Question put, That this Clause be now read a second time.—The Committee divided:

Ayes, 7.	Noes, 7.
Mr. Wilson.	Mr. David Plunket.
Mr. George Beresford.	Mr. Macartney.
Mr. Downing.	Sir Michael Hicks Beach.
Sir Coleman O'Loghlen.	Mr. Close.
Mr. O'Shaughnessy.	Mr. Meldon.
Mr. Butt.	Mr. Serjeant Sherlock.
Mr. Shaw.	Mr. Law.

Whereupon, the Chairman declared himself with the *Noes.*

Another new Clause (parties may appear in person, or by attorney or by counsel)—(Mr. *Law*),—brought up, and read the first time.—Question put, That the Clause be now read a second time.—The Committee divided:

Ayes, 8.	Noes, 6.
Mr. David Plunket.	Mr. Wilson.
Mr. Macartney.	Mr. George Beresford.
Sir Michael Hicks Beach.	Mr. Downing.
Mr. Close.	Sir Colman O'Loghlen.
Mr. Meldon.	Mr. O'Shaughnessy.
Mr. Serjeant Sherlock.	Mr. Shaw.
Mr. Butt.	
Mr. Law.	

Clause *added.*

Schedules A. and B. amended, and *agreed to.*

Schedule C., *agreed to.*

[Adjourned till To-morrow, at Twelve o'clock.

Tuesday, 17th July 1877.

MEMBERS PRESENT:

Mr. ATTORNEY GENERAL FOR IRELAND in the Chair.

Mr. King-Harman.	Mr. Close.
Mr. Shaw.	Mr. George Beresford.
Sir Colman O'Loghlen.	Mr. Downing.
Mr. David Plunket.	Mr. Law.
Mr. Wilson.	Sir Michael Hicks Beach.
Mr. Macartney.	

New Schedule D., brought up, and read a first and second time.

Amendment proposed in Class 1., line 1, to leave out the words "and county"—(Sir *Colman O'Loghlen*).—Question put, That the words "and county" stand part of the Schedule.—The Committee divided:

Ayes, 7.	Noes, 3.
Mr. David Plunket.	Mr. Downing.
Mr. Wilson.	Sir Colman O'Loghlen.
Mr. George Beresford.	Mr. Shaw.
Mr. Macartney.	
Mr. King-Harman.	
Mr. Close.	
Mr. Law.	

Another Amendment proposed in Class I., line 2, to leave out the words "and county"—(Sir *Colman O'Loghlen*).—Question, That the words "and county" stand part of the Schedule,—put, and *agreed to.*

Another Amendment proposed in Class I., line 2, to leave out the figures 1,000 *l.*, in order to insert 1,100 *l.*—(Mr. *David Plunket*),—instead thereof.—Question, That 1,000 *l.* stand part of the Schedule,—put, and *negatived.*

Question put, "That the figures 1,100 *l.* be there inserted."—The Committee divided:

Ayes, 6.	Noes, 4.
Mr. David Plunket.	Mr. Macartney.
Mr. Wilson.	Mr. Downing.
Mr. George Beresford.	Sir Colman O'Loghlen.
Mr. King-Harman.	Mr. Shaw.
Mr. Close.	
Mr. Law.	

Another Amendment proposed, Class I., line 3, to leave out the figures 1,000 *l.*, in order to insert the figures 1,100 *l.*—(Mr. *David Plunket*),—instead thereof.—Question, That the figures 1,000 *l.* stand part of the Schedule,—put, and *negatived.*

Question put, "That the figures 1,100 *l.* be there inserted."—The Committee divided:

Ayes, 8.	Noes, 2.
Mr. David Plunket.	Mr. Downing.
Mr. Wilson.	Sir Colman O'Loghlen.
Mr. George Beresford.	
Mr. Macartney.	
Mr. King-Harman.	
Mr. Close.	
Mr. Law.	
Mr. Shaw.	

Another Amendment proposed, Class II., line 4, to leave out the figures 900 *l.*, in order to insert the figures 1,000 *l.*—(Mr. *David Plunket*),—instead thereof.—Question put, That the figures 900 *l.* stand part of the Schedule.—The Committee divided:

Ayes, 4.	Noes, 6.
Mr. Downing.	Mr. David Plunket.
Mr. King-Harman.	Mr. Wilson.
Sir Colman O'Loghlen.	Mr. George Beresford.
Mr. Shaw.	Mr. Macartney.
	Mr. Close.
	Mr. Law.

Figures 1,000 *l.* inserted.

Another

Another Amendment proposed, Class II., line 5, to leave out the figures 900 *l.*, in order to insert the figures 1,000 *l.*—(Sir *Coleman O'Loghlen*),—instead thereof.—Question, That the figures 900 *l.* stand part of the Schedule,—put, and *negatived.*

Figures 1,000 *l.* inserted.

Another Amendment proposed, Class II., line 6, to leave out the figures 900 *l.*, in order to insert the figures 1,000 *l.*—(Sir *Coleman O'Loghlen*),—instead thereof.—The Committee divided:

Ayes, 3.	Noes, 7.
Mr. Downing.	Mr. David Plunket.
Mr. Shaw.	Mr. Wilson.
Mr. King-Harman.	Mr. George Beresford.
	Mr. Macartney.
	Sir Coleman O'Loghlen.
	Mr. Close.
	Mr. Law.

Figures 1,000 *l.* inserted.

Another Amendment proposed in Class I., line 7, to leave out the figures 900 *l.*, in order to insert the figures 1,000 *l.*—(Mr. *David Plunket*),—instead thereof.—Question put, That the figures 900 *l.* stand part of the Schedule.—The Committee divided:

Ayes, 3.	Noes, 8.
Mr. Downing.	Mr. Law.
Mr. King-Harman.	Mr. Close.
Mr. Shaw.	Sir Colman O'Loghlen.
	Sir Michael Hicks Beach.
	Mr. Macartney.
	Mr. George Beresford.
	Mr. Plunket.
	Mr. Wilson.

Figures 1,000 *l.* inserted.

Another Amendment proposed in Class II., line 8, to leave out the figures 900 *l.*, in order to insert the figures 1,000 *l.*—(Mr. *David Plunket*),—instead thereof.—Question put, That the figures 900 *l.* stand part of Schedule.—The Committee divided:

Ayes, 3.	Noes, 8.
Mr. Shaw.	Mr. David Plunket.
Mr. Downing.	Mr. Wilson.
Mr. King-Harman	Mr. George Beresford.
	Mr. Macartney.
	Sir Michael Hicks Beach.
	Sir Colman O'Loghlen.
	Mr. Close.
	Mr. Law.

Figures 1,000 *l.* inserted.

Another Amendment proposed, Class II., line 9, to leave out the figures 900 *l.*, in order to insert the figures 1,000 *l.*—(Mr. *David Plunket*),—instead thereof.—Question put, That the figures 900 *l.* stand part of the Schedule.—The Committee divided:

Ayes, 3.	Noes, 8.
Mr. Downing.	Mr. David Plunket.
Mr. Shaw.	Mr. Wilson.
Mr. King-Harman.	Mr. Macartney.
	Mr. George Beresford.
	Sir Michael Hicks Beach.
	Sir Colman O'Loghlen.
	Mr. Close.
	Mr. Law.

Figures 1,000 *l.* inserted.

Another Amendment proposed, Class II., line 10, to leave out the figures 900 *l.*, in order to insert the figures 1,000 *l.*—(Sir *Colman O'Loghlen*),—instead thereof.—Question put, That the figures "900 *l.*" stand part of the Schedule.—The Committee divided:

Ayes, 3.	Noes, 8.
Mr. Downing.	Mr. David Plunket.
Mr. Shaw.	Mr. Wilson.
Mr. King-Harman.	Mr. Macartney.
	Mr. George Beresford.
	Sir Michael Hicks Beach.
	Sir Colman O'Loghlen.
	Mr. Close.
	Mr. Law.

Figures 1,000 *l.* inserted.

Another Amendment proposed in Class II., line 11, to leave out the figures 900 *l.*, in order to insert the figures 1,000 *l.*—(Sir *Colman O'Loghlen*),—instead thereof.—Question put, "That the figures 900 *l.*, stand part of the Schedule."—The Committee divided:

Ayes, 3.	Noes, 8.
Mr. Downing.	Mr. David Plunket.
Mr. King-Harman.	Mr. Wilson.
Mr. Shaw.	Mr. George Beresford.
	Mr. Macartney.
	Sir Michael Hicks Beach.
	Sir Colman O'Loghlen.
	Mr. Close.
	Mr. Law.

Figures 1,000 *l.* inserted.

Another Amendment proposed in Class II., line 12, to leave out the figures 900 *l.*, in order to insert the figures 1,000 *l.*—(Mr. *Wilson*),—instead thereof.—Question put, 'That the figures 900 *l.* stand part of the Schedule."—The Committee divided:

Ayes, 6.	Noes, 5.
Mr. George Beresford.	Mr. David Plunket.
Sir Michael Hicks Beach.	Mr. Wilson.
Mr. Downing.	Mr. Macartney.
Sir Colman O'Loghlen.	Mr. Law.
Mr. King-Harman.	Mr. Close.
Mr. Shaw.	

Another Amendment proposed in Class III., line 13, to leave out the figures 800 *l.*, in order to insert the figures 900 *l.*—(Mr. *David Plunket*),—instead thereof.—Question, That the figures 800 *l.* stand part of the Schedule,—put, and *negatived.*

Figures 900 *l.* inserted.

Another Amendment proposed in Class VI., line 30, to leave out the figures 500 *l.*, in order to insert the figures 600 *l.*—(Mr. *King-Harman*),—instead thereof.—Question put, That the figures 500 *l.* stand part of the Schedule.—The Committee divided:

Ayes, 6.	Noes, 5.
Mr. Macartney.	Mr. David Plunket.
Sir Michael Hicks Beach.	Mr. Wilson.
Mr. Downing.	Mr. George Beresford.
Sir Colman O'Loghlen.	Mr. King-Harman.
Mr. Law.	Mr. Close.
Mr. Shaw.	

Another Amendment proposed in Class VI., line 3, to leave out the figures 500 *l.*, in order to insert the figures 600 *l.*—(Mr. *King-Harman*),—instead thereof.—Question put, that the figures 500 *l.* stand part of the Schedule.—The Committee divided:

Ayes, 6.	Noes, 5.
Mr. Macartney.	Mr. David Plunket.
Sir Michael Hicks Beach.	Mr. Wilson.
Mr. Downing.	Mr. George Beresford.
Sir Colman O'Loghlen.	Mr. King-Harman.
Mr. Close.	Mr. Law.
Mr. Shaw.	

Schedule, as amended, added to the Bill.

New Schedule (E.) added.

Preamble read, and *agreed to.*

Bill, as amended, to be reported.

Ordered, To Report.

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REPORT

FROM THE

SELECT COMMITTEE

ON

ECCLESIASTICAL OFFICES AND FEES BILL;

WITH THE

PROCEEDINGS OF THE COMMITTEE.

Ordered, by The House of Commons, *to be Printed,*
16 *April* 1877.

Wednesday, 21*st February* 1877.

Ordered, THAT the Ecclesiastical Offices and Fees Bill be read a Second Time, and committed to a Select Committee.

Friday, 2*nd March* 1877.

Committee nominated of—

Mr. Monk.
Mr. Walter.
Mr. Whitwell.
Mr. Dodson.
Mr. Parnell.
Mr. Beresford Hope.
Mr. Heygate.
Mr. Majendie
Mr. Russell Gurney.
Sir John Kennaway.
Colonel Makins.
Mr. Greene.
Mr. Cowper-Temple.

Ordered, THAT Five be the Quorum of the Committee.

Wednesday, 14*th March* 1877.

Ordered, THAT Mr. Russell Gurney be discharged from further attendance on the Select Committee on the Ecclesiastical Offices and Fees Bill.

Ordered, THAT Mr. Gregory be added to the Committee.

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REPORT.

THE SELECT COMMITTEE to whom the ECCLESIASTICAL FEES BILL was referred, have gone through the Bill, and made Amendments thereunto.

16 *April* 1877.

PROCEEDINGS OF THE COMMITTEE.

Friday, 9th March 1877.

MEMBERS PRESENT:

Mr. Cowper-Temple.	Mr. Parnell.
Mr. Beresford Hope.	Mr. Majendie.
Mr. Whitwell.	Mr. Walter.
Mr. Monk.	Mr. Heygate.
Colonel Makins.	Mr. Greene.
Sir John Kennaway.	

Mr. COWPER-TEMPLE was called to the Chair.

The Committee deliberated.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 13th March 1877.

MEMBERS PRESENT:

Mr. COWPER-TEMPLE in the Chair.

Mr. Beresford Hope.	Sir John Kennaway.
Mr. Whitwell.	Mr. Majendie.
Mr. Greene.	Colonel Makins.
Mr. Monk.	Mr. Heygate.
Mr. Walter.	

Preamble *postponed.*

Clause 1, *agreed to.*

Clause 2, *postponed.*

Clause 3, amended, and *agreed to.*

Clauses 4 and 5, *postponed.*

Clause 6.—Amendment proposed, in line 11, to leave out from the word "Act," to the end of the Clause—(Mr. *Beresford Hope*).—Question, That the words proposed to be left out stand part of the Clause—put, and *negatived.*—Clause, as amended, *agreed to.*

Clause 7, amended, and *agreed to.*

Clause 8, *agreed to.*

Clauses 9—11, amended, and *agreed to.*

Clause 12.—Amendment proposed, in line 17, after the word "appointment," to insert the words "who is not, or has not been a barrister-at-law of not less than seven years' standing,

standing, and "—(Mr. *Monk*).—Question put, That those words be there inserted.—The Committee divided:

Ayes, 3.	Noes, 6.
Mr. Monk.	Mr. Whitwell.
Mr. Walter.	Mr. Beresford Hope.
Mr. Greene.	Mr. Heygate.
	Mr. Majendie.
	Sir John Kennaway.
	Colonel Makins.

Clause *agreed to.*

Clauses 13—14, amended, and *agreed to.*

Clauses 15—16, *disagreed to.*

Clauses 17—18, *agreed to.*

Clause 19, amended, and *agreed to.*

Clauses 20—22, *agreed to.*

Clause 23, amended, and *agreed to.*

Clause 24, *agreed to.*

Clauses 25—33, *postponed.*

Clauses 34—35, amended, and *agreed to.*

Clause 36, *agreed to.*

Clauses 37—38, amended, and *agreed to.*

Clauses 39—40, *agreed to.*

Clause 41, *postponed.*

Clause 42.—Amendment proposed, at the beginning of the Clause, to leave out the words "In settling the," in order to insert the words "From and after the commencement of this Act"—(Mr. *Monk*)—instead thereof.—Question put, That the words "In settling the" stand part of the Clause.—The Committee divided:

Ayes, 2.	Noes, 6.
Mr. Walter.	Mr. Monk.
Mr. Greene.	Mr. Whitwell.
	Mr. Beresford Hope.
	Mr. Heygate.
	Mr. Majendie.
	Colonel Makins.

Words inserted.—Clause, as amended, *agreed to.*

[Adjourned till Thursday next, at Twelve o'clock.

Thursday, 15th March 1877.

MEMBERS PRESENT:

Mr. COWPER-TEMPLE in the Chair.

Mr. Beresford Hope.	Mr. Majendie.
Mr. Whitwell.	Mr. Walter.
Colonel Makins.	Mr. Gregory.
Mr. Heygate.	Sir John Kennaway.
Mr. Monk.	Mr. Parnell.
Mr. Greene.	

Clause 43, *postponed.*

Clause 44.—Amendment proposed, in line 26, after the word "vested," to insert the words "any person duly elected churchwarden, or duly nominated or appointed churchwarden" —(Mr. *Monk*).—Question put, That those words be there inserted.—The Committee divided:

Ayes, 10.	Noe, 1.
Mr. Monk.	Mr. Beresford Hope.
Mr. Walter.	
Mr. Whitwell.	
Mr. Parnell.	
Mr. Heygate.	
Mr. Majendie.	
Mr. Gregory.	
Sir John Kennaway.	
Colonel Makins.	
Mr. Greene.	

Another Amendment proposed, at the end of the last Amendment, to add the words "may, if he think fit, in the presence of the incumbent of the parish or of the rural dean, sign the following declaration: 'I, *A. B.*, do sincerely declare that I will faithfully and diligently perform the duties of the office of churchwarden for the parish of to the best of my ability, according to law.' The registrar of the diocese within which such parish is situate shall issue forms of declaration on the application of the incumbent or of a churchwarden, and shall register the name of each person so signing the same, upon receiving the same duly signed and attested by the incumbent or rural dean, before whom the declaration was made, without any payment whatsoever; and every declaration so made and registered shall be as valid and effecual in law as if it had been made in the manner prescribed by the Act of the Fifth and Sixth of William the Fourth, chapter sixty-two, section nine"—(Mr. *Monk*).

Amendment proposed to the said proposed Amendment, to insert after the first word "may" the words "unless the Bishop or Archdeacon should hold his visitation for the admission of churchwarden within three calendar months after Easter Day in the said year" —(Mr. *Beresford Hope*).—Question put, That those words be inserted in the proposed Amendment.—The Committee divided:

Aye, 1.	Noes, 10.
Mr. Beresford Hope.	Mr. Monk.
	Mr. Walter.
	Mr. Whitwell.
	Mr. Parnell.
	Mr. Heygate.
	Mr. Majendie.
	Mr. Gregory.
	Sir John Kennaway.
	Colonel Makins.
	Mr. Greene.

Proposed Amendment added.—Clause, as amended, *agreed to.*

Clause 45, *agreed to.*

Clause 46, amended, and *agreed to.*

Clauses 47—48, *postponed.*

Clause 49, amended, and *agreed to.*

Clauses 50—51, *postponed.*

Clause 52.—Amendment made.—Another Amendment proposed, in line , after the words "sum of," to leave out the words "fifteen hundred," in order to insert the words "one thousand"—(Mr. *Monk*)—instead thereof.—Question, That the words "fifteen hundred" stand part of the Clause.—The Committee divided:

Ayes, 5.	Noes, 6.
Mr. Walter.	Mr. Monk.
Mr. Whitwell.	Mr. Parnell.
Mr. Gregory.	Mr. Beresford Hope.
Sir John Kennaway.	Mr. Heygate.
Mr. Greene.	Mr. Majendie.
	Colonel Makins.

The words "one thousand," inserted.—Clause, as amended, *agreed to.*

Clause 53, *disagreed to.*

Clause 54, amended, and *agreed to.*

Clause 55, *agreed to.*

Clause 56, *postponed.*

Clause 57, *agreed to.*

Clauses 58—59, *postponed.*

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 20th March 1877.

MEMBERS PRESENT:

Mr. COWPER-TEMPLE in the Chair.

Mr. Dodson.	Mr. Majendie.
Mr. Monk.	Mr. Whitwell.
Mr. Greene.	Mr. Gregory.
Mr. Heygate.	Mr. Beresford Hope.
Mr. Walter.	Sir John Kennaway.
Colonel Makins.	

Clauses 60—62, *postponed.*

Postponed Clauses considered.

Clauses 2, 4, 5, 25—29, *further postponed.*

Postponed Clause 30, amendments made.—Question put, That the Clause, as amended, stand part of the Bill.—The Committee divided:

Ayes, 7.	Noes, 4.
Mr. Monk.	Mr. Beresford Hope.
Mr. Walter.	Mr. Heygate.
Mr. Whitwell.	Colonel Makins.
Mr. Dodson.	Mr. Majendie.
Mr. Gregory.	
Sir John Kennaway.	
Mr. Greene.	

Postponed Clause 31, amended, and *agreed to.*

Postponed Clauses 32—33, *agreed to.*

Postponed Clause 41.—Amendments made.—Another Amendment proposed after the last Amendment, to insert the words "One chancellor of a diocese within the Province of Canterbury"—(Mr. *Beresford Hope*).—Question put, That those words be there inserted.—The Committee divided:

Ayes, 7.	Noes, 3.
Mr. Walter.	Mr. Monk.
Mr. Whitwell.	Mr. Dodson.
Mr. Beresford Hope.	Mr. Greene.
Mr. Heygate.	
Mr. Majendie.	
Sir John Kennaway.	
Colonel Makins.	

Another Amendment proposed, after the last Amendment, to insert the words "one archdeacon of an archdeaconry within the Province of Canterbury"—(Mr. *Beresford Hope*).—Question put, That those words be there inserted.—The Committee divided:

Ayes, 6.	Noes, 4.
Mr. Walter.	Mr. Monk.
Mr. Whitwell.	Mr. Dodson.
Mr. Beresford Hope.	Sir John Kennaway.
Mr. Heygate.	Mr. Greene.
Mr. Majendie.	
Colonel Makins.	

Another Amendment proposed, after the last Amendment, to add the words "One proctor in Convocation for the clergy of the Province of Canterbury"—(Mr. *Beresford Hope*).—Question proposed, That those words be there inserted.

Amendment proposed to the proposed Amendment to leave out the word "One," in order to insert the word "Two"—(Colonel *Makins*)—instead thereof.—Question, That the word "One" stand part of the proposed Amendment—put, and *negatived.*

Word "Two" inserted in the proposed Amendment.—Question put, That the Amendment, as amended, be inserted in the Clause.—The Committee divided:

Ayes, 5.	Noes, 5.
Mr. Walter.	Mr. Monk.
Mr. Beresford Hope.	Mr. Whitwell.
Mr. Heygate.	Mr. Dodson.
Mr. Majendie.	Sir John Kennaway.
Colonel Makins.	Mr. Greene.

Whereupon the Chairman declared himself with the *Noes.*

Another Amendment proposed, after the last Amendment, to insert the words "One rural dean of a rural deanery within the Province of Canterbury"—(Mr. *Beresford Hope*).—Question put, That those words be there inserted.—The Committee divided:

Ayes, 5.	Noes, 4.
Mr. Walter.	Mr. Monk.
Mr. Whitwell.	Mr. Dodson.
Mr. Beresford Hope.	Sir John Kennaway.
Mr. Majendie.	Mr. Greene.
Colonel Makins.	

Further Amendments made.—Clause, as amended, *agreed to.*

Postponed Clause 43, *disagreed to.*

Postponed Clauses 47—48, *agreed to.*

Postponed Clauses 50—51, amended, and *agreed to.*

Postponed Clause 56, *agreed to.*

[Adjourned till Thursday next, at Twelve o'clock.

Thursday, 22nd March 1877.

MEMBERS PRESENT:

Mr. COWPER-TEMPLE in the Chair.

Mr. Monk.	Mr. Gregory.
Mr. Green.	Mr. Walter.
Mr. Beresford Hope.	Sir John Kennaway.
Colonel Makins.	Mr. Whitwell.
Mr. Majendie.	Mr. Dodson.
Mr. Heygate.	

Postponed Clauses further considered.

Postponed Clause 58, *disagreed to.*

Postponed

Postponed Clause 59, amended, and *agreed to.*

Postponed Clause 60, *agreed to.*

Postponed Clauses 61—62, amended, and *agreed to.*

Further postponed Clauses considered.

Clause 2, *agreed to.*

Clause 4, amended, and *agreed to.*

Clause 5, *agreed to.*

Clause 25.—Amendment proposed, in line 7, after the word "Orders," to leave out the words "shall, unless otherwise," in order to insert the words "may, if so"—(Mr. *Beresford Hope*)—instead thereof.—Question put, That the words proposed to be left out stand part of the Clause.—The Committee divided:

Ayes, 7.	Noes, 4.
Mr. Monk.	Mr. Beresford Hope.
Mr. Walter.	Mr. Heygate.
Mr. Whitwell.	Mr. Majendie.
Mr. Dodson.	Colonel Makins.
Mr. Gregory.	
Sir John Kennaway.	
Mr. Greene.	

Clause *agreed to.*

Clause 26, amended, and *agreed to.*

Clauses 27—29, *agreed to.*

New Clauses considered.

New Clause A, brought up by Mr. *Beresford Hope*, read first and second time, and *added.*

New Clause B, brought up by the *Chairman*, and read the first time, as follows:—"The provisions of the last preceding section shall not apply to any benefice which exceeds in net yearly value the sum of two hundred pounds; and the value of such benefices shall be ascertained and determined by the certificate of the Ecclesiastical Commissioner for England."

Clause read a second time.—Amendment proposed, to leave out the word "Two" in order to insert the word "Three"—(Mr. *Beresford Hope*)—instead thereof.—Question put, That the word "Two" stand part of the Clause.—The Committee divided:

Ayes, 8.	Noes, 3.
Mr. Monk.	Mr. Beresford Hope.
Mr. Walter.	Mr. Heygate.
Mr. Whitwell.	Colonel Makins.
Mr. Dodson.	
Mr. Majendie.	
Mr. Gregory.	
Sir John Kennaway.	
Mr. Greene.	

Another Amendment proposed, after the word "hundred," to insert the words "and fifty"—(Colonel *Makins*).—Question put, That those words be there inserted.—The Committee divided:

Ayes, 4.	Noes, 7.
Mr. Beresford Hope.	Mr. Monk.
Mr. Heygate.	Mr. Walter.
Mr. Majendie.	Mr. Whitwell.
Colonel Makins.	Mr. Dodson.
	Mr. Gregory.
	Sir John Kennaway.
	Mr. Greene.

Clause further amended, and *added.*

[Adjourned till Thursday, 12th April, at Twelve o'clock.

Thursday, 12th April 1877.

MEMBERS PRESENT:

Mr. COWPER-TEMPLE in the Chair.

Mr. Whitwell.	Sir John Kennaway.
Mr. Heygate.	Mr. Walter.
Mr. Majendie.	Mr. Gregory.
Mr. Monk.	Mr. Beresford Hope.
Mr. Greene.	Mr. Dodson.

New Clause C, brought up by Mr. *Gregory*, and read first and second time, and *added*.

New Clause D, brought up by Mr. *Monk*, and read the first time, as follows:—"From and after the passing of this Act no synodals or procurations shall be demanded or taken at the visitation of any bishop or other ordinary."—Question put, That this Clause be now read a second time.—The Committee divided:

Ayes 3.	Noes 7.
Mr. Monk.	Mr. Whitwell.
Mr. Walter.	Mr. Beresford Hope.
Mr. Greene.	Mr. Heygate.
	Mr. Majendie.
	Mr. Gregory.
	Sir John Kennaway.
	Colonel Makins.

New Clause E, brought up by Mr. *Monk*, and read the first time, as follows:—"The persons directed under the last preceding section, to recommend rules and orders to Her Majesty, shall be nominated by Her Majesty under Her Sign Manual, and shall form a Council which shall be called the Ecclesiastical Fees Council."—Question put, That this Clause be now read a second time.—The Committee divided:

Ayes 6.	Noes 4.
Mr. Monk.	Mr. Beresford Hope.
Mr. Walter.	Mr. Heygate.
Mr. Whitwell.	Mr. Majendie.
Mr. Gregory.	Colonel Makins.
Sir John Kennaway.	
Mr. Greene.	

Amendments made.—Another Amendment proposed, at the end of the Clause, to add the words, "The Chancellor of a diocese within the Province of Canterbury shall be recommended by the Chancellors of the dioceses within the said Province"—(Mr. *Beresford Hope*).—Question put, That those words be there added.—The Committee divided:

Ayes, 3.	Noes, 8.
Mr. Beresford Hope.	Mr. Monk.
Colonel Makins.	Mr. Walter.
Mr. Heygate.	Mr. Whitwell.
	Mr. Dodson.
	Mr. Majendie.
	Mr. Gregory.
	Sir John Kennaway.
	Mr. Greene.

Clause, as amended, *added*.

New Clauses, F, G and H, brought up by the *Chairman*, and read first and second time, and *added*.

New Clause, I, brought up by the *Chairman*, and read the first time, as follows:—

"At any time after the appointment of a registrar of any province or diocese, the archbishop or bishop of such province or diocese may, if he think fit, appoint by a writing under his hand a barrister at law or a solicitor to be during the pleasure of such archbishop

bishop or bishop a deputy registrar of such province or diocese; provided that every deputy registrar appointed under this section shall have his usual place of business in London or Middlesex.

"The duties which would have been performed by the registrar of the province or diocese, if no such appointment of deputy registrar under this section had been made, shall, in the event of such appointment, be apportioned between such registrar and deputy registrar, in such manner as the archbishop or bishop of such province or diocese shall by a writing under his hand from time to time direct.

"The acts of such deputy shall be considered to all intents and purposes the acts of the officer to whom he is appointed deputy."

Question put, That this Clause be now read a second time.—The Committee divided:

Aye, 1.	Noes, 10.
Mr. Heygate.	Mr. Monk.
	Mr. Walter.
	Mr. Whitwell.
	Mr. Dodson.
	Mr. Beresford Hope.
	Mr. Majendie.
	Mr. Gregory.
	Sir John Kennaway.
	Colonel Makins.
	Mr. Greene.

New Clause, J, brought up by the *Chairman*, and read the first time, as follows:—"The Archbishop of Canterbury may appoint as a deputy registrar of the Province of Canterbury under this section a person who has his usual place of business in the city of Canterbury."—Question put, That the Clause be now read a second time.—The Committee divided:

Ayes, 4.	Noes, 7.
Mr. Walter.	Mr. Monk.
Mr. Beresford Hope.	Mr. Whitwell.
Mr. Gregory.	Mr. Dodson.
Sir John Kennaway.	Mr. Heygate.
	Mr. Majendie.
	Colonel Makins.
	Mr. Greene.

New Clauses, K and L, brought up by the *Chairman*, and read first and second time, and *added*.

New Clause, M, brought up by the *Chairman*, and read the first time, as follows:—"The monies which may from time to time accrue to the Ecclesiastical Fees Fund in consequence of the appointment under this Act to any of the offices of the Provinces of Canterbury or York, mentioned in the second column of Schedule A. to this Act, shall be applied towards making the payments directed to be made under this Act other than the emoluments of such judge."—Question, That this Clause be now read a second time, put, and *negatived*.

New Clause, N, brought up by Mr. *Heygate*, and read the first time, as follows:—"From and after the passing of this Act no synodals or procurations shall be payable *by the holders of benefices under the value of* 200 *l. a year*, and the value of benefices shall, for the purposes of this section, be ascertained and determined by a certificate of the Ecclesiastical Commissioners for England."—Question put, That this Clause be now read a second time.—The Committee divided:

Aye, 1.	Noes, 9.
Mr. Heygate.	Mr. Monk.
	Mr. Whitwell.
	Mr. Dodson.
	Mr. Beresford Hope.
	Mr. Majendie.
	Mr. Gregory.
	Sir John Kennaway.
	Colonel Makins.
	Mr. Greene.

SCHEDULES of the Bill amended, and *agreed to*.

Preamble amended, and *agreed to*.

Bill, as amended, to be reported.

REPORT

FROM THE

SELECT COMMITTEE

ON

ECCLESIASTICAL OFFICES AND FEES BILL;

WITH THE

PROCEEDINGS OF THE COMMITTEE.

Ordered, by The House of Commons, *to be Printed,*
16 *April* 1877.

159.

Under 2 oz.

551

REPORT

FROM THE

SELECT COMMITTEE

ON

EMPLOYERS LIABILITY FOR INJURIES TO THEIR SERVANTS;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

AND APPENDIX.

Ordered, by The House of Commons, *to be Printed,*
25 *June* 1877.

285.

Thursday, 15*th March* 1877.

Ordered, THAT the Select Committee of last Session, to inquire whether it may be expedient to render Masters liable for injuries occasioned to their Servants by the negligent acts of certificated managers of collieries, managers, foremen, and others to whom the general control and superintendence of workshops and works is committed, and whether the term "common employment" could be defined by Legislative Enactment more clearly than it is by Law as it at present stands, be re-appointed.

Ordered, THAT the Committee do consist of Seventeen Members:—

Mr. Attorney General.	Mr. Mundella.
Mr. Lowe.	Mr. Knowles.
Mr. Wyndham.	Mr. Eustace Smith.
Sir Henry Jackson.	Mr. Gibson.
Mr. Walter Stanhope.	Mr. Meldon.
Mr. Shaw Lefevre.	Mr. Cawley.
Sir Daniel Gooch.	Mr. Hopwood.
Mr. Macdonald.	Mr. Bulwer.
Mr. Tennant.	

Ordered, THAT the Committee have power to send for Persons, Papers, and Records.

Ordered, THAT Five be the Quorum of the Committee.

Tuesday, 10*th April* 1877.

Ordered, THAT Mr. *Ripley* be added to the Committee.

Friday, 13*th April* 1877.

Ordered, THAT the Report from the Select Committee of last Session, on Employers Liability for Injuries to their Servants, be referred to the Committee.

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REPORT.

THE SELECT COMMITTEE appointed to inquire whether it may be expedient to render MASTERS liable for INJURIES occasioned to their SERVANTS, by the negligent acts of CERTIFICATED MANAGERS of COLLIERIES, MANAGERS, FOREMEN, and others to whom the general Control and Superintendence of Workshops and Works is committed, and whether the term "Common Employment" could be defined by Legislative Enactment more clearly than it is by the Law as it at present stands;——HAVE considered and taken Evidence upon the matters to them referred, and have agreed to the following REPORT:—

1. THE questions referred to your Committee, though apparently two, are in reality but different modes of presenting one and the same inquiry, and they can hardly be considered apart from the much larger question of the nature and extent of the liability of employers for injuries to their servants in the course of their employment.

2. At present a master is not liable to any servant for any injury which arises from the act or default of any fellow servant, whether that fellow servant be in a position of authority or not, and in ascertaining whether the person to whose act or default the injury is due is a fellow servant, the widest possible construction is given to the term "Common Employment."

3. That a man should be liable for injury occasioned by his own act, neglect, or permission is obviously just. That a man should be liable for injury occasioned by acts which he has neither done or permitted, which have resulted from no neglect of his, or in disobedience to his order, or which he may have forbidden, is a result the justice of which it is not easy at once to recognise, and one which some eminent lawyers do not hesitate to describe as "essentially unjust." Such, however, is, and since the reign of Charles the Second appears to have been, the law of this country as to injuries occasioned by servants in the course of their employment to persons not in the same employment. For such injuries the master employing the servant is liable, notwithstanding that the acts which occasioned them may not have been ordered or authorised, or may even have been forbidden.

J. Brown, Q.C., Q. 493.
Lord Justice Brett, Q. 1919.

4. There is a strong concurrence of authority against the justice of this law, though there seems to be some difference of opinion as to its origin and historical development. Some regard it as having been established on considerations of policy, as distinguished from justice; others, as a mistaken application of the maxim "*qui facit per alium facit per se*." A very slight examination of the principle involved in this maxim, which obviously relates to agency, will show that it is inapplicable to cases where the act causing the injury is done either without authority or in defiance of it. The probability is, that the rule was an application of the maxim "*respondeat superior*," and this probability is increased by the consideration that none of the decisions which have explained and determined the law have ever extended it beyond the limits to which that maxim would properly apply. The state of society in which the maxim *respondeat superior* obtained had passed away long before the English law was established, but there is a certain analogy, so far as affects third parties, between the position of a master hiring

Lord Justice Bramwell, Q. 1100–1103.
Lord Justice Brett, Q. 1926–1931.
J. Brown, Q.C., Q. 493.

servants and a master or *paterfamilias* employing his slaves or his children. In each case there is a single task or enterprise carried on by several persons, and it is not difficult to see how the master, the *superior*, he who puts the enterprise in motion, was held responsible to persons outside for any injury resulting from the enterprise, by whomsoever occasioned; an analogy which may explain, if it does not justify, the law.

5. But there is no record that the master or *superior* was liable for injury occasioned to any person engaged in the enterprise. The slave or child under the Roman law had no choice and no rights, and the English Courts have always considered that a servant, who is free to choose whether he will or will not take part in the enterprise or task, by the contract for service itself undertakes to run all risks necessarily incident to the employment, the principal and most obvious of which is the injury which the negligence of others engaged in the same employment may occasion.

6. For upwards of 150 years after a master was held liable for injuries occasioned to strangers, no attempt to extend the liability to cases of injury occasioned by fellow workmen is recorded, and when at last such an attempt was made in the well-known case of Priestly *v.* Fowler, which was decided in 1837, the Court at once refused to extend the principle to cases to which it was not applicable, and that on the broad ground that a man is free to take the employment or not, but that if he chooses to do so he takes it with all attendant risks. The decision in the case of Priestly *v.* Fowler, if not the whole of the reasoning on which it is based, has been generally approved and followed by the Courts in this country and in the United States.

7. This judgment has, however, been the subject of much adverse criticism. It is contended that whether the law throwing on the master the responsibility for injuries occasioned to strangers be just or unjust, the exception in regard to injuries occasioned by fellow workmen is simply an exception to an established rule, and it is regarded as an exception specially directed against and injurious to those who from their position are most in want of the protection of the rule. But your Committee consider that this view is not well founded; and they have the high authority of the late Lord Chief Baron Pollock for saying that the Court, in Priestly *v.* Fowler, laid down no new law. He says, "I believe it "was the law; I thoroughly understood it to be so before attention was called "to it." The true principle of law is that no man is responsible except for his own acts and defaults, and the rule relied upon is itself not a rule but an exception, which the Courts have explained and confined within proper limits.

In Vose *v.* Lancashire and Yorkshire Railway Company, 27 L. J. Ex., 249.

8. It is, however, to be observed, that a series of decisions by the Scotch Judges denied that the decisions of the English Courts were consonant with the Law of Scotland. In this condition of the authorities, an appeal was presented to the House of Lords in 1856, in the course of which the Law Lords affirmed, that the law was identical for England and Scotland.

In Sword *v.* Cameron, decided in 1839; shortly after, Priestly *v.* Fowler, Dixon *v.* Rankin, decided in 1852, and Gray *v.* Brassey, in the same year.

9. There can be no doubt that the effect of abolishing the defence of "common employment," (as has been actually proposed in a Bill submitted to the House) would effect a serious disturbance in the industrial arrangements of the country. Sooner or later the position of master and workman would find its level by a readjustment of the rate of wages, but in the meantime great alarm would be occasioned, and the investment of capital in industrial undertakings would be discouraged. Your Committee cannot express their opinion on the question of the public policy involved in the existing law better than by adopting the language of the distinguished American judge who decided the case of Farwell *v.* The Boston and Worcester Railway Corporation, "When "several persons are employed in the conduct of one common enterprise or "undertaking, and the safety of each depends much upon the care and skill "with which each other shall perform his appropriate duty, each is an observer "of the conduct of the other, can give notice of any misconduct, incapacity, "or neglect of duty, and leave the service if the common employer will not "take such precautions and employ such agents as the safety of the whole "party may require. By these means the safety of each will be much more "effectually secured than could be done by a resort to the common employer "for an indemnity in the case of loss of life by the negligence of each other."

In Bartonshill Coal Company *v.* Reid, and Same *v.* Maguire.

C. P. Ilbert, Q. 287.

10. Your

10. Your Committee, therefore, are of opinion that no case is made out for any alteration in the law relating to the liability of employers to their workmen for injury in the course of their employment, except in the matters to which they now proceed to refer.

11. A master is not altogether free from liability to his servant for injuries resulting in the course of his employment. If it can be shown that the master has omitted to provide the servant with proper materials and resources for the work (such as engines or scaffolding), or has been negligent in the choice of the persons to whom he entrusts the supply of such materials or the arrangement of such work, or has been guilty of want of care in the selection of proper servants, the master is liable, even to his own servant, for any injury resulting from such omission or negligence. But, to establish this liability, it must be brought home to the master personally. The development of modern industry has created large numbers of employing bodies, such as corporations and public companies, to whom it is not possible to bring home such personal default; and there are other cases in which masters leave the whole conduct of their business to agents and managers, themselves taking no personal part whatever, either in the supply of materials or in the choice of subordinate servants.

C. P. Ilbert, Q. 306.

J. Brown, Q. 492.

12. Your Committee are of opinion that in cases such as these, that is, where the actual employers cannot personally discharge the duties of masters, or where they deliberately abdicate their functions, and delegate them to agents, the acts or defaults of the agents who thus discharge the duties and fulfil the functions of masters, should be considered as the personal acts or defaults of the principals and employers, and should impose the same liability on such principals and employers as they would have been subject to had they been acting personally in the conduct of their business, notwithstanding that such agents are technically in the employment of the principals. The fact of such a delegation of authority would have to be established in each case, but this would not be a matter of difficulty.

13. Your Committee are further of opinion, that the doctrine of common employment has been carried too far, when workmen employed by a contractor and workmen employed by a person or Company who has employed such contractor, are considered as being in the same common employment. Such cases do not come within the limits of the policy on which the law has been justified in paragraph 9 of this Report.

25 *June* 1877.

PROCEEDINGS OF THE COMMITTEE.

Friday, 13*th April* 1877.

MEMBERS PRESENT:

Mr. Macdonald.	Mr. Wyndham.
Mr. Knowles.	Mr. Attorney General.
Mr. Eustace Smith.	Mr. Tennant.
Mr. Lowe.	Mr. Meldon.
Mr. Ripley.	Mr. Gibson.
Mr. Hopwood.	

Mr. LOWE was called to the Chair.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 20*th April* 1877.

MEMBERS PRESENT:

Mr. LOWE in the Chair.

Mr. Tennant.	Sir Daniel Gooch.
Mr. Macdonald.	Mr. Wyndham.
Mr. Hopwood.	Mr. Bulwer.
Mr. Eustace Smith.	Mr. Gibson.
Mr. Knowles.	Mr. Shaw Lefevre.
Mr. Ripley.	Sir Henry Jackson.
Mr. Walter Stanhope.	

Mr. *William Crawford*, Mr. *Benjamin Pickard*, Mr. *Henry Cook*, and Mr. *John Burnett* were severally examined.

[Adjourned till Tuesday next, at Twelve o'clock.

[The next Meeting was further adjourned until Friday next, at Twelve o'clock.]

Friday, 27*th April* 1877

MEMBERS PRESENT:

Mr. LOWE in the Chair.

Mr. Macdonald.	Sir Daniel Gooch.
Mr. Tennant.	Mr. Knowles.
Mr. Ripley.	Mr. Wyndham.
Mr. Eustace Smith.	Mr. Bulwer.

Mr. *J. B. Simpson* and Mr. *W. R. Cole* were severally examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 1st May 1877.

MEMBERS PRESENT:

Mr. LOWE in the Chair.

Mr. Macdonald.	Mr. Bulwer.
Mr. Knowles.	Mr. Shaw Lefevre.
Mr. Eustace Smith.	Mr. Gibson.
Mr. Ripley.	Mr. Walter Stanhope.
Mr. Tennant.	Mr. Attorney General.
Sir Daniel Gooch.	Mr. Hopwood.

Mr. *Fereday Smith*, Mr. *Alfred Hewlett*, Mr. *Francis H. Pearce*, Mr. *John Knowles*, and Mr. *William Firth* were severally examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 4th May 1877.

MEMBERS PRESENT:

Mr. LOWE in the Chair.

Mr. Tennant.	Sir Daniel Gooch.
Mr. Macdonald.	Mr. Eustace Smith.
Mr. Knowles.	Mr. Walter Stanhope.
Mr. Hopwood.	

Mr. *Robert Baxter*, Sir *George Bramwell*, a Judge of Appeal, Mr. *Henry Currer Briggs*, Mr. *George Findlay*, Mr. *James Grierson*, and Mr. *Henry Oakley*, were severally examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 12th May 1877.

MEMBERS PRESENT:

Mr. LOWE in the Chair.

Mr. Eustace Smith.	Mr. Bulwer.
Mr. Tennant.	Mr. Hopwood.
Mr. Ripley.	Mr. Wyndham.
Mr. Knowles.	Mr. Meldon.
Mr. Macdonald.	Mr. Shaw Lefevre.
Sir Daniel Gooch.	Mr. Attorney General.
Mr. Gibson.	

Mr. *Robert Heath*, a Member of the House, Mr. *Sydney Smith*, Mr. *John Brinton*, Mr. *John Robinson*, Mr. *Henry Wren*, and Mr. *Joseph Craven*, were severally examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 15th May 1877.

MEMBERS PRESENT:

Mr. LOWE in the Chair.

Mr. Macdonald.	Mr. Shaw Lefevre.
Mr. Eustace Smith.	Mr. Gibson.
Mr. Knowles.	Mr. Hopwood.
Mr. Tennant.	Mr. Attorney General.
Mr. Ripley.	

Mr. *William Brown*, Sir *Baliol Brett*, a Justice of Appeal, Mr. *E. N. Blake*, Mr. *Robert Knight*, and Mr. *John Gillespie*, were severally examined.

[Adjourned till Tuesday, 5th June, at Twelve o'clock, to consider Report.

Tuesday, 5th June 1877.

MEMBERS PRESENT:

Mr. LOWE in the Chair.

Sir Daniel Gooch.	Mr. Ripley.
Mr. Knowles.	Mr. Hopwood.
Mr. Eustace Smith.	Mr. Tennant.
Mr. Meldon.	Mr. Walter Stanhope.
Mr. Wyndham.	Mr. Shaw Lefevre.
Mr. Bulwer.	

DRAFT REPORT, proposed by the *Chairman*, brought up, and read the first time, as follows:—

"1. THAT a person who by his own negligence has caused injury to another person should make compensation for such injury, is one of the most elementary conceptions of law. Equally clear is the principle that if the injury be caused by negligence, it matters not whether the injury be actually inflicted by the hand of the person causing it, or by the hand of another. Up to the time of Charles the Second, the Committee are informed, on high judicial authority, there is no instance of a master being liable for the negligence of his servant. It has, however, long been perfectly well settled that a master is liable to pay compensation for the consequences of a wrongful act, neglect, or default of his servant committed in the course of his employment.

"2. The wrongful act may be done without the master's knowledge. It may be contrary to his express instructions, yet if it was done by a menial servant in the course of his employment the master is liable. The Committee have the highest authority, that of Lord Justices Brett and Bramwell, for saying that this law is in cases where the master has contributed nothing to the injury extremely unjust to the defendant. The maxim '*qui facit per alium facit per se*,' seems intended to meet cases where a person who has really caused the mischief seeks to defend himself on the ground that he does not appear prominently or personally in the transaction, but to have no application to cases where the spring and origin is in the servant. The law is, however, perfectly well settled It appears to have been the creation of the judges, and certainly did not err on the side of showing too much consideration for the rich as against the poor.

"3. The question was undoubtedly surrounded with great difficulty. The false principle involved in the decision which declared the master liable for the misconduct of his menial servant with which he had nothing to do, at last bore its natural fruit. Unjust as was the law which made the master liable to strangers for the acts of his menial servant unauthorised by him, that hardship was nothing compared with the prospect which suddenly opened of making the owners of our vast industrial undertakings liable for the carelessness or mistake of any one of hundreds or thousands of operatives. It was not till the year 1837 that the question arose whether the remedy against the master, which had so long been conceded to strangers, existed also in favour of one servant who had been injured by the carelessness of another.

"4. Doubtless the better course would have been to have brought the question before Parliament, in which case the whole subject might have been reconsidered, and the vice in the original rule of law corrected. Unfortunately this course was not adopted, but instead

instead of it the judges set themselves to remedy the impending mischief by what certainly appears an extraordinary stretch of judicial legislation. It is laid down by a series of decisions, for the details of which the Committee must refer to the evidence of Mr. Ilbert and Mr. Wright, and the Lord Justices Bramwell and Brett, that every workman must be taken to have agreed with his employer, as between him and his master, to run all the ordinary risks of the service, including the risk of negligence on the part of his fellow servant whenever he is acting in discharge of his duty as servant of him who is the common master of both.

" 5. Having thus obtained the means of liberating the master from the duty of compensating his servants, the next step has been to give to the doctrine the greatest extension possible. By a series of decisions it has been laid down that the platelayer in a railway is the fellow workman of the station master; that the servants of a contractor are the fellow servants of the workmen of the person for whom the contractor is at work; in fact, that every person employed by a master is the fellow servant of every other person.

" 6. Your Committee are warranted by the evidence of the eminent judges and barristers examined before them, in regarding these judicial innovations with the utmost jealousy and dissatisfaction. They observe with some surprise that the common law as it was believed to be up to 1837 has been entirely altered by judicial decision, and that not in any abstruse or remote point, but in a matter which most nearly concerns the interests of hundreds of thousands of Her Majesty's subjects.

" 7. This has been effected by means which appear to the Committee to be of the most questionable nature, the inventing and enforcing a contract which never really existed. Where, beside what is expressed in a contract there is something else in the contemplation of both parties which they would have expressed had either party required it, the Committee can understand that the Courts of Law may be perfectly justified in saying that such a contract must be taken to have been entered into. But so far from this being the case, the contract which the judges have assumed to be entered into by every operative, involving as it does the cession of most important rights without any consideration, is utterly unknown to the person to be bound by it, and was in its full extent, as will presently appear, unknown to the judges themselves.

" 8. Lord Justice Bramwell remarks, 'that the expression which has been used, that a 'servant contracts that he will make no claim against the master for injury done by the 'negligence of a fellow servant, is an unfortunate one. The obvious difficulty in that 'mode of expressing it is, that neither master nor servant ever think of such a matter when 'they enter into the relation of master and servant.' Justice Brett says (Question 1919), 'I say now that the law is that you cannot properly import any condition or stipulation 'into a contract, except one which in the minds of all reasonable men must have been in 'the contemplation and intention of both parties to the contract at the time it was 'made.'

" 9. Another hardship connected with the proceedings of the judges is the gradual expansion of the contract which they created. They held that a fellow servant could not by his carelessness impose any liability on his master, and then the question became all important who was a fellow servant. By degrees it has been held that every one except the master in an industrial undertaking is a fellow servant with every other person employed in any capacity, thus the implied contract has swelled gradually till the term fellow servant is no longer required, and the rule may be stated thus: The master is liable for his own personal negligence and for no other. Had the Court foreseen this result, all discussion as to what constitutes a common employment would have been unnecessary.

" 10. Had the law been laid down at once in the full extent to which it has gradually advanced, public attention would doubtless have been awakened, and the whole question fairly considered by Parliament; but the doctrine has been expanding for 35 years, and has only just reached its full development in the case decided this year in the Court of Session in Scotland, to the effect that the servants of a contractor are the fellow-servants of the servants of the person with whom he contracts.

" 11. The question for the Committee is, how are they to deal with a state of things which Lord Justice Brett fairly describes as a bad exception to a bad law. Shall they maintain the exception on account of the badness of the law, or fall back on the law on account of the badness of the exception; or shall they seek some middle course which may extricate them from both?

" 12. Several courses are open to the Committee, but each attended with considerable difficulty. They may either recommend, 1st, that the law be brought back to the state which it was believed to be in before the year 1837, that is, before the case of Priestley and Fowler, and the decisions which were based upon it. 2nd. They may acquiesce in the present state of things by which the compensation from the master, which the workman once possessed for the injuries which he might sustain by the negligence of others, has been practically taken away without his knowledge; or, 3rd, the Committee may recommend some middle course which may satisfy the reasonable demands of the workmen, without pressing with unjust severity on the master. The first course, that of giving the workman exactly the same remedy against the master, the same right to compensation which is now enjoyed by strangers, has in its favour the high authority of Lord

Justice Brett, and would effectually reverse a state of things which the Committee find it very difficult to defend; but before they can recommend this course they must be satisfied that the state of the law as to injuries inflicted on strangers by the negligence of menial servants is just and satisfactory. Lord Justice Bramwell, Lord Justice Brett, Lord Moncrieff, and Mr. Joseph Brown, Q.C., all agree, with more or less emphasis, in condemning the state of the law with regard to liability for the negligence of menial servants as harsh, and founded on no satisfactory principle. Whatever they may think of the propriety of superseding this law by judicial decisions, the Committee are not prepared to recommend a return to the state of the law which existed previous to the decision of the case of Priestley and Fowler in 1837.

"13. On the other hand, a majority of the Committee consider that while in the case of menials the principle *qui facit per alium facit per se* has been unjustly extended, it has in the case of workmen been unduly circumscribed.

"14. In a small industrial establishment, managed by its proprietor, it seems that the master, a person presumably able to meet all such demands upon him, would be liable, as the law now stands, for all injuries which arose from his negligence, that is, in the case supposed for all defects of management by which injury is inflicted on his workmen. Such an undertaking occupies a middle position between the case of the master of menial servants, who is liable for all negligence of his servants, and the case of the owners of large industrial undertakings who are practically liable for none. Such an industrial arrangement, removed as to liability from either extreme, seems to the Committee a type of the conditions under which the interests of masters and men are fairly consulted. The workmen has, as the Committee think he ought to have, the right to compensation for any injury which he may suffer from the negligence of those whose orders he must obey, and the master is not liable for injuries which his workmen may commit upon each other. Taking this as a type of what appears to them to be a just and fair arrangement, the Committee observe with regret that it seldom exists, and that the law as it stands offers a premium on its discontinuance. By declaring that managers are fellow-servants with the labouring men in a mine, a factory, or a workshop, the law has offered a premium on the delegation of all power from the master to his subordinates, since he is relieved by such a delegation from the liability which he had while he managed his own affairs. But to whom is that liability transferred? To inferior agents who are liable, but whom, by reason of their position in life, it is not worth while to sue. Thus by a change effected entirely for the benefit and convenience of the owner the workman is deprived of an indemnity which the law gives him, because the law never contemplated the vast industrial undertakings which now exist, and the courts of law, by an imaginary contract, have restricted the claim for compensation to fellow-servants who are unable to pay. This seems to be a case for the application of the maxim *sic utere tuo alienum ne laedas*; if the master, for his own convenience, withdraws himself from the management of his own business, the workmen ought not to suffer by the loss of a defendant whose position is a guarantee that he is able to satisfy their just demands, and by the substitution of one who is not any more than the creditors of the master, ought to be deprived of their remedy against him, because the debts were incurred by his agents.

"15. The Committee, therefore, recommend that the funds of every industrial undertaking shall be liable to compensate any person employed in such undertaking for any injury he may receive by reason of the negligence of any person exercising authority mediately or immediately derived from the owners of such undertaking, with this qualification that the liability to indemnify shall not extend to persons who, though exercising authority, are *bonâ fide* employed in actual labour as distinguished from superintendence.

"16. Considerable difference of opinion has prevailed among the witnesses examined before the Committee as to whether the master should or should not be allowed to contract himself out of the liability for the negligence of his subordinate agents. On the one side it is urged that the liability to compensate is a great means of preventing accidents, by enlisting the interests of the master as strongly as possible on the side of safety, and that the operatives are too reckless to value the security for an injury which they never expect to suffer. On the other hand, it seems strange to extend a disability which is attached to lunatics on account of their infirmity, to children on account of their tender years, and to sailors by a very questionable policy on account of their notorious imprudence, to men who are the very strength and mainstay of the country, to whom more, perhaps, than to any other class England is indebted for her wealth and her greatness. It is hard to understand why a man should be free to contract in all the other affairs of life, and yet be treated as incompetent to judge for himself in a subject with which he must be peculiarly well acquainted, and in which he is deeply interested. It is the opinion of the Committee that in this, as in all other lawful matters, a case of overwhelming necessity must be produced before they make so startling an exception to the ordinary course of law, and that no such case here exists.

"17. Finally, the Committee would recommend that whether it be determined to adopt these or any other recommendations, or to leave matters as they stand at present, an Act of Parliament be passed, stating in clear and precise terms the law as regards the liability of masters for injuries to persons employed in industrial undertakings. Your Committee have

have found very few of the witnesses whom they have examined, excepting professional lawyers, thoroughly acquainted with the present state of the law on this important subject. This arises probably from two causes:—First, the whole matter is left to the common law, and is only to be found in reported cases and works which are a sealed letter to the great majority of the public; and, secondly, the law has been gradually developed by the ingenuity of the judges to an extent which they themselves at first hardly contemplated. The consequence has been that what were believed to be the rights of the working classes have been gradually withdrawn from them without their knowledge, and without the power of protesting, or of taking steps to defend themselves by an appeal to the Legislature."

[Adjourned till Tuesday, 19th June, at Twelve o'clock.

Tuesday, 19*th June* 1877.

MEMBERS PRESENT:

Mr. LOWE in the Chair.

Sir Daniel Gooch.	Mr. Walter Stanhope.
Mr. Knowles.	Sir Henry Jackson.
Mr. Macdonald.	Mr. Wyndham.
Mr. Eustace Smith.	Mr. Hopwood.
Mr. Tennant.	Mr. Meldon.
Mr. Bulwer.	Mr. Shaw Lefevre.

DRAFT REPORT, proposed by Sir *Henry Jackson*, brought up, and read the first time, as follows:—

"1. THE questions referred to your Committee, though apparently two, are in reality but different modes of presenting one and the same inquiry, and they can hardly be considered apart from the much larger question of the nature and extent of the liability of employers for injuries to their servants in the course of their employment.

"2. At present a master is not liable to any servant for any injury which arises from the act or default of any fellow servant, whether that fellow servant be in a position of authority or not, and in ascertaining whether the person to whose act or default the injury is due is a fellow servant, the widest possible construction is given to the term 'Common Employment.'

"3. That a man should be liable for injury occasioned by his own act, neglect or permission is obviously just. That a man should be liable for injury occasioned by acts which he has neither done or permitted, which has resulted from no neglect of his, or in disobedience to his order, or which he may have forbidden, is a result the justice of which it is not easy at once to recognise, and one which some eminent lawyers do not hesitate to describe as 'essentially unjust.' Such, however, is, and since the reign of Charles the Second appears to have been, the law of this country as to injuries occasioned by servants in the course of their employment to persons not in the same employment. For such injuries the master employing the servants is liable, notwithstanding that the acts which occasioned them may not have been ordered or authorised, or may even have been forbidden. J. Brown, Q.C., Q. 493.

"4. There is a strong concurrence of authority against the justice of this law, though there seems to be some difference of opinion as to its origin and historical development. Some regard it as having been established on considerations of policy, as distinguished from justice; others, as a mistaken application of the maxim '*qui facit per alium facit per se.*' A very slight examination of the principle involved in this maxim, which obviously relates to agency, will show that it is inapplicable to cases where the act causing the injury is done either without authority or in defiance of it. The probability is, that the rule was an application of the maxim '*respondeat superior*,' and this probability is increased by the consideration that none of the decisions which have explained and determined the law have ever extended it beyond the limits to which that maxim would properly apply. The state of society in which the maxim *respondeat superior* obtained had passed away long before the English law was established, but there is a certain analogy, so far as affects third parties, between the position of a master hiring servants and a master or *paterfamilias* employing his slaves or his children. In each case there is a single task or enterprise carried on by several persons, and it is not difficult to see how the master, the *superior*, he who puts the enterprise in motion, was held responsible to persons outside for any injury resulting from the enterprise, by whomsoever occasioned; an analogy which may explain, if it does not justify, the law. Lord Justice Bramwell, Lord Justice Brett. J. Brown, Q.C. Q. 493.

 "5. But

"5. But it was never held that the master or *superior* was liable for injury occasioned to any person engaged in the enterprise. The slave or child under the Roman law had no choice and no rights, and the English Courts have always considered that a servant, who is free to choose whether he will or will not take part in the enterprise or task, by the contract for service itself undertakes to run all risks necessarily incident to the employment, the principal and most obvious of which is the injury which the negligence of others engaged in the same employment may occasion.

"6. For upwards of 150 years after a master was held liable for injuries occasioned to strangers, no attempt to extend the liability to cases of injury occasioned by fellow workmen is recorded, and when at last such an attempt was made in the well-known case of Priestly *v.* Fowler, which was decided in 1837, the Court at once refused to extend the principle to cases to which it was not applicable, and that on the broad ground that a man is free to take the employment or not, but that if he chooses to do so he takes it with all attendant risks. The decision in the case of Priestly *v.* Fowler, if not the whole of the reasoning on which it is based, has been generally approved and followed by the Courts in this country and in the United States.

"7. This judgment has, however, been the subject of much adverse criticism by the working classes, and by many persons who are not professional lawyers. It is contended that whether the law throwing on the master the responsibility for injuries occasioned to strangers be just or unjust (and by these persons it is usually assumed to be just) the exception in regard to injuries occasioned by fellow-workmen is simply an exception to an established rule, and it is regarded as an exception specially directed against and injurious to those who from their position are most in want of the protection of the rule. But your Committee consider that this view is not well founded. The true principle of law is that no man is responsible except for his own acts and defaults, and the rule relied upon is itself not a rule but an exception, which the Courts have explained and confined within proper limits.

"8. There can be no doubt that the effect of abolishing the defence of 'common employment,' (as has been actually proposed in a Bill submitted to the House) would effect a serious disturbance in the industrial arrangements of the country. Sooner or later the position of master and worker would find its level by a readjustment of the rate of wages, but in the meantime great alarm would be occasioned, and the investment of capital in industrial undertakings would be discouraged. Your Committee cannot express their opinion on the question of the public policy involved in the existing law better than by
C. P. Ilbert, Q. 287. adopting the language of the distinguished American judge who decided the case of Farwell *v.* The Boston and Worcester Railway Corporation, 'When several persons are em-'ployed in the conduct of one common enterprise or undertaking, and the safety of each 'depends much upon the care and skill with which each other shall perform his appro-'priate duty, each is an observer of the conduct of the other, can give notice of any mis-'conduct, incapacity, or neglect of duty, and leave the service if the common employer 'will not take such precautions and employ such agents as the safety of the whole party 'may require. By these means the safety of each will be much more effectually secured 'than could be done by a resort to the common employer for an indemnity in the case of 'loss of life by the negligence of each other.'

"9. Your Committee, therefore, are of opinion that no case is made out for any alteration in the law relating to the liability of employers to their workmen for injury in the course of their employment, except in one matter, to which they now proceed to refer.

C. P. Ilbert, Q. 306 "10. A master is not altogether free from liability to his servant for injuries resulting in the course of his employment. If it can be shown that the master has omitted to provide the servant with proper materials and resources for the work (such as engines or
J. Brown, Q. 492. scaffolding), or has been negligent in the choice of the persons to whom he entrusts the supply of such materials or the arrangement of such work, the master is liable, even to his own servant, for any injury resulting from such omission or negligence. But, to establish this liability, it must be brought home to the master personally. The development of modern industry has created large numbers of employing bodies, such as corporations and public companies, to whom it is not possible to bring home such personal default; and there are other cases in which masters leave the whole conduct of their business to agents and managers, themselves taking no personal part whatever, either in the supply of materials or in the choice of subordinate servants.

"11. Your Committee are of opinion that in cases such as these, that is, where the actual employers cannot personally discharge the duties of masters, or where they deliberately abdicate their functions, and delegate them to agents, the acts or defaults of the agents who thus discharge the duties and fulfil the functions of masters, should be considered as the personal acts or defaults of the principals and employers, and should impose the same liability on such principals and employers as they would have been subject to, had they been acting personally in the conduct of their business, notwithstanding that such agents are technically in the employment of the principals. The fact of such a delegation of authority would have to be established in each case, but this would not be a matter of difficulty.

"12. Upon

"12. Upon the questions referred to them, your Committee therefore report, that so far as persons entrusted with such delegated authority may properly be included in the terms 'certificated managers of collieries or managers,' it is expedient to render masters liable for injuries occasioned to their servants by the negligent acts of such persons, but no further, and that the term 'common employment' should be defined by legislative enactment, so as to exclude such persons."

MOTION MADE, and Question proposed, That the Draft Report proposed by the Chairman be now read a second time, paragraph by paragraph—(Mr. *Macdonald*).—Amendment proposed, to leave out the words "the Chairman," in order to insert the words "Sir Henry Jackson" instead thereof—(Mr. *Bulwer*).—Question put, That the words "the Chairman" stand part of the Question.—The Committee divided:

Ayes, 4.	Noes, 8.
Mr. Meldon.	Sir Henry Jackson.
Mr. Hopwood.	Mr. Bulwer.
Mr. Macdonald.	Mr. Wyndham.
Mr. Shaw Lefevre.	Mr. Walter Stanhope.
	Mr. Tennant.
	Sir Daniel Gooch.
	Mr. Knowles.
	Mr. Eustace Smith.

Words "Sir Henry Jackson" inserted.—Main Question, as amended, *put, and agreed to.*

Draft Report proposed by Sir *Henry Jackson*, read a second time, paragraph by paragraph.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 22nd June 1877.

MEMBERS PRESENT:

Mr. LOWE in the Chair.

Sir Daniel Gooch.	Mr. Wyndham.
Mr. Shaw Lefevre.	Mr. Ripley.
Mr. Macdonald.	Sir Henry Jackson.
Mr. Eustace Smith.	Mr. Walter Stanhope.
Mr. Tennant.	Mr. Bulwer.
Mr. Knowles.	Mr. Hopwood.
Mr. Meldon.	

Paragraph 1.—Question put, "That this paragraph stand part of the proposed Report."—The Committee divided:

Ayes, 9.	Noes, 3.
Sir Henry Jackson.	Mr. Meldon.
Mr. Bulwer.	Mr. Macdonald.
Mr. Wyndham.	Mr. Shaw Lefevre.
Mr. Walter Stanhope.	
Mr. Knowles.	
Mr. Tennant.	
Sir Daniel Gooch.	
Mr. Ripley.	
Mr. Eustace Smith.	

Paragraph 2, *agreed to.*

Paragraph 3.—Amendment proposed in line 5, to leave out from the word "recognise," to the end of the paragraph, in order to add the words, "It is, however, on grounds of general expediency, rather than of abstract justice, that such a state of the law can be defended. It has the effect of compelling persons to exercise care in the selection of their agents and servants, and even to take precautions in the interest of the public against the negligent acts of such agents. It can scarcely be doubted that, but for this state of the law, injuries to the public from negligent acts of irresponsible agents and servants would be greatly multiplied"—(Mr. *Shaw Lefevre*)—instead thereof.—Question put,

put, "That the words proposed to be left out stand part of the paragraph."—The Committee divided:

Ayes, 8.	Noes, 4.
Sir Henry Jackson.	Mr. Meldon.
Mr. Bulwer.	Mr. Tennant.
Mr. Wyndham	Mr. Macdonald.
Mr. Walter Stanhope.	Mr. Shaw Lefevre.
Mr. Knowles.	
Sir Daniel Gooch.	
Mr. Ripley.	
Mr. Eustace Smith.	

Question put, "That this paragraph stand part of the proposed Report."—The Committee divided:

Ayes, 8.	Noes, 4.
Sir Henry Jackson.	Mr. Meldon.
Mr. Bulwer.	Mr. Tennant.
Mr. Wyndham.	Mr. Macdonald.
Mr. Walter Stanhope.	Mr. Shaw Lefevre.
Mr. Knowles.	
Sir Daniel Gooch.	
Mr. Ripley.	
Mr. Eustace Smith.	

Paragraph 4.—Question put, "That this paragraph stand part of the proposed Report."—The Committee divided:

Ayes, 8.	Noes, 4.
Sir Henry Jackson.	Mr. Meldon.
Mr. Bulwer.	Mr. Tennant.
Mr. Wyndham.	Mr. Macdonald.
Mr. Walter Stanhope.	Mr. Shaw Lefevre.
Mr. Knowles.	
Mr. Ripley.	
Sir Daniel Gooch.	
Mr. Eustace Smith.	

Paragraph 5, amended.—Amendment proposed in the second line to leave out the words "the slave or child under the Roman Law had no choice and no rights"—(Mr. *Eustace Smith*).—Question put, "That the words proposed to be left out stand part of the paragraph."—The Committee divided:

Ayes, 7.	Noes, 5.
Mr. Meldon.	Mr. Walter Stanhope.
Sir Henry Jackson.	Mr. Tennant.
Mr. Bulwer.	Sir Daniel Gooch.
Mr. Wyndham.	Mr. Ripley.
Mr. Knowles.	Mr. Eustace Smith.
Mr. Macdonald.	
Mr. Shaw Lefevre.	

Question put, "That this paragraph, as amended, stand part of the proposed Report."—The Committee divided:

Ayes, 8.	Noes, 4.
Sir Henry Jackson.	Mr. Meldon.
Mr. Bulwer.	Mr. Tennant.
Mr. Wyndham.	Mr. Macdonald.
Mr. Walter Stanhope.	Mr. Shaw Lefevre.
Mr. Knowles.	
Sir David Gooch.	
Mr. Ripley.	
Mr. Eustace Smith.	

Amendment proposed, that the following new paragraph be inserted in the proposed Report.

"Some members of your Committee are of opinion that, by the Common Law of this country, a master alway swas liable to make compensation to strangers for injury occasioned by the negligent or unskilful act of his servant. An instance of such Common Law liability is to be found in Noy's Maxims, c. 44 (published in 1641), and they think that this liability is founded on the maxim *qui facit per alium facit per se*; 'according,' to use the language of Mr. Justice Blackburn, delivering the opinion of the judges to the House of

of Lords, 'to the well-known exposition of the law in Quarman *v.* Burnett (6 M. & W. 509), where Mr. Baron Parke says, "upon the principle that *qui facit per alium facit per se*, the master is responsible for the acts of his servant.'" "If this be the true principle, it is difficult to see how the maxim is applicable to a case where the injury is inflicted by one fellow-servant on another, inasmuch as the servant injured is as much identified with the master as the servant injuring"—(Mr. *Bulwer*).—Question put, "That this paragraph be inserted in the proposed Report."—The Committee divided:

Mersey Docks Trustees *v.* Gibbs, Law Rep., 1 H. L., p. 114.

Ayes, 2.	Noes, 10.
Mr. Bulwer.	Mr. Meldon.
Mr. Knowles.	Sir Henry Jackson.
	Mr. Wyndham.
	Mr. Walter Stanhope.
	Mr. Tennant.
	Mr. Macdonald.
	Mr. Shaw Lefevre.
	Sir Daniel Gooch.
	Mr. Ripley.
	Mr. Eustace Smith.

Paragraph 6.—Question put, "That this paragraph stand part of the proposed Report."—The Committee divided:

Ayes, 10.	Noes, 2.
Sir Henry Jackson.	Mr. Meldon.
Mr. Bulwer.	Mr. Macdonald.
Mr. Wyndham.	
Mr. Walter Stanhope.	
Mr. Knowles.	
Mr. Tennant.	
Mr. Shaw Lefevre.	
Mr. Ripley.	
Sir Daniel Gooch.	
Mr. Eustace Smith.	

Paragraph 7, amended.—Amendment proposed in line 9, after the words "well founded," to insert the words "And they have the high authority of the late Lord Chief Baron Pollock for saying that the Court, in Priestley *v.* Fowler, laid down no new law. He says, 'I believe it was the law; I thoroughly understood it to be so before attention was called to it'"—(Mr. *Bulwer*).—Question put, "That those words be there inserted."—The Committee divided:

In Vose *v.* Lancashire and Yorkshire Railway Company, 27 L. J., Ex., 249.

Ayes, 11.	Noe, 1.
Mr. Meldon.	Mr. Macdonald.
Sir Henry Jackson.	
Mr. Bulwer.	
Mr. Walter Stanhope.	
Mr. Wyndham.	
Mr. Knowles.	
Mr. Tennant.	
Mr. Shaw Lefevre.	
Mr. Ripley.	
Sir Daniel Gooch.	
Mr. Eustace Smith.	

Question put, "That this paragraph, as amended, stand part of the proposed Report."—The Committee divided:

Ayes, 9.	Noes, 3.
Sir Henry Jackson.	Mr. Meldon.
Mr. Bulwer.	Mr. Macdonald.
Mr. Wyndham.	Mr. Shaw Lefevre.
Mr. Walter Stanhope.	
Mr. Knowles.	
Mr. Tennant.	
Sir Daniel Gooch.	
Mr. Ripley.	
Mr. Eustace Smith.	

Paragraph 8, amended.—Amendment proposed in the seventh line to leave out from the word "discouraged" to the end of the paragraph—(Mr. *Tennant*).—Question put, "That the

the words proposed to be left out stand part of the paragraph."—The Committee divided:

Ayes, 7.	Noes, 5.
Sir Henry Jackson.	Mr. Meldon.
Mr. Bulwer.	Mr. Walter Stanhope.
Mr. Wyndham.	Mr. Tennant.
Mr. Knowles.	Mr. Macdonald.
Mr. Shaw Lefevre.	Mr. Eustace Smith.
Mr. Ripley.	
Sir Daniel Gooch.	

Question put, "That this paragraph, as amended, stand part of the proposed Report."—The Committee divided:

Ayes, 8.	Noes, 5.
Sir Henry Jackson.	Mr. Meldon.
Mr. Bulwer.	Mr. Hopwood.
Mr. Wyndham.	Mr. Tennant.
Mr. Walter Stanhope.	Mr. Macdonald.
Mr. Knowles.	Mr. Shaw Lefevre.
Mr. Ripley.	
Sir Daniel Gooch.	
Mr. Eustace Smith.	

Paragraph 9.—Amendment proposed in the first line to omit the word "therefore," in order to insert the word "however"—(Mr. *Eustace Smith*)—instead thereof.—Question put, "That the word 'therefore' stand part of the paragraph."—The Committee divided:

Ayes, 7.	Noes, 6.
Sir Henry Jackson.	Mr Meldon.
Mr. Bulwer.	Mr. Hopwood.
Mr. Wyndham.	Mr. Tennant.
Mr. Walter Stanhope.	Mr. Macdonald.
Mr. Knowles.	Mr. Shaw Lefevre.
Sir Daniel Gooch.	Mr. Eustace Smith.
Mr. Ripley.	

Question put, "That this paragraph, as amended, stand part of the proposed Report."—The Committee divided:

Ayes, 11.	Noes, 2.
Mr. Meldon.	Mr. Macdonald.
Mr. Hopwood.	Mr. Shaw Lefevre.
Sir Henry Jackson.	
Mr. Bulwer.	
Mr. Wyndham.	
Mr. Walter Stanhope.	
Mr. Knowles.	
Mr. Tennant.	
Mr. Ripley.	
Sir Daniel Gooch.	
Mr. Eustace Smith.	

Paragraph 10, amended.—Question put, "That this paragraph, as amended, stand part of the proposed Report."—The Committee divided:

Ayes, 12.	Noe, 1.
Mr. Meldon.	Mr. Macdonald.
Mr. Hopwood.	
Sir Henry Jackson.	
Mr. Bulwer.	
Mr. Walter Stanhope.	
Mr. Wyndham.	
Mr. Knowles.	
Mr. Tennant.	
Mr. Shaw Lefevre.	
Mr. Ripley.	
Sir Daniel Gooch.	
Mr. Eustace Smith.	

Paragraph 11.—Amendment proposed in line 9, after the word "principals," to insert the words "accordingly your Committee recommend that employers should be liable to compensate their servants for injuries received by reason of the negligence in the common employment

employment of a fellow servant occupying the position of vice-principal, certificated manager of collieries, manager, deputy manager, and others, to whom the general control and superintendence of workshops and works is committed"—(Mr. *Meldon*).—Question put, "That those words be there inserted."—The Committee divided:

Ayes, 5.	Noes, 8.
Mr. Meldon.	Sir Henry Jackson.
Mr. Hopwood.	Mr. Bulwer.
Mr. Macdonald.	Mr. Walter Stanhope.
Mr. Shaw Lefevre.	Mr. Wyndham.
Mr. Eustace Smith.	Mr. Knowles.
	Mr. Tennant.
	Mr. Ripley.
	Sir Daniel Gooch.

Question put, "That this paragraph stand part of the proposed Report."—The Committee divided:

Ayes, 9.	Noes, 4.
Sir Henry Jackson.	Mr. Meldon.
Mr. Bulwer.	Mr. Hopwood.
Mr. Walter Stanhope.	Mr. Macdonald.
Mr. Wyndham.	Mr. ShawLefevre.
Mr. Knowles.	
Mr. Tennant.	
Mr. Ripley.	
Sir Daniel Gooch.	
Mr. Eustace Smith.	

Amendment proposed, That the following new paragraph be inserted in the proposed Report.:—Your Committee are further of opinion that the doctrine of common employment has been carried too far, when workmen employed in trades which are distinct and separate, though carried on for the profit of the same person or company, or workmen employed by a contractor, and workmen employed by a person or company who has employed such contractor, are considered as being in the same common employment. Such cases do not come within the limits of the policy on which the law has been justified in paragraph 8 of this Report—(Mr. *Shaw Lefevre*).—Question proposed, That this paragraph be inserted in the proposed Report.—Amendment proposed to amend the paragraph, by omitting the words, "workmen employed in trades which are distinct and separate, though carried on for the profit of the same person or company, or"—(Sir *Henry Jackson*).—Question put, "That the words proposed to be left out stand part of the proposed paragraph."—The Committee divided:

Ayes, 4.	Noes, 8.
Mr. Hopwood.	Sir Henry Jackson.
Mr. Macdonald.	Mr. Bulwer.
Mr. Shaw Lefevre.	Mr. Walter Stanhope.
Mr. Eustace Smith.	Mr. Wyndham.
	Mr. Knowles.
	Mr. Tennant.
	Mr. Ripley.
	Sir Daniel Gooch.

Paragraph, as amended, inserted in the proposed Report.

Amendment proposed, That the following new paragraph be inserted in the proposed Report:—"Your Committee are further of opinion that in any change of the law thus recommended employers should not be permitted to contract themselves out of the liability to be imposed upon them. They cannot now contract themselves out of liability for their own personal negligence. Railway companies are not permitted to contract themselves out of liability to their passengers for the negligent acts of their servants. Shipowners are not permitted to contract themselves out of liability to their seamen for the seaworthiness of their ships. The same principle should be maintained in any extension of the liability of employers for the negligent acts of their managers—(Mr. *Shaw Lefevre*).—Question put, "That this paragraph be inserted in the proposed Report."—The Committee divided:

Ayes, 2.	Noes, 10.
Mr. Macdonald.	Mr. Hopwood.
Mr. Shaw Lefevre.	Sir Henry Jackson.
	Mr. Bulwer.
	Mr. Walter Stanhope.
	Mr. Wyndham.
	Mr. Knowles.
	Mr. Tennant.
	Mr. Ripley.
	Sir Daniel Gooch.
	Mr. Eustace Smith.

Amendment proposed, That the following new paragraph be inserted in the proposed Report:—*7a.* It is, however, to be observed that a series of decisions by the Scotch Judges, viz., Sword *v.* Cameron, decided in 1839, shortly after Priestley *v.* Fowler; Dixon *v.* Rankin, decided in 1852; and Gray *v.* Brassey, in the same year, denied that the decisions of the English courts were consonant with the Law of Scotland. In this condition of the authorities, an appeal was presented to the House of Lords in 1856, in the cases of the Bartonshill Coal Company *v.* Reid, and the same against Maguire, in the course of which the Law Lords affirmed that the Law was identical for England and Scotland —(Mr. *Hopwood*).—Question put, "That this paragraph be inserted in the proposed Report."—The Committee divided:

Ayes, 7.	Noes, 5.
Mr. Hopwood.	Mr. Bulwer.
Sir Henry Jackson.	Mr. Wyndham.
Mr. Walter Stanhope.	Mr. Macdonald.
Mr. Knowles.	Mr. Shaw Lefevre.
Mr. Tennant.	Sir Daniel Gooch.
Mr. Ripley.	
Mr. Eustace Smith.	

Paragraph 12, *disagreed to.*

Question put, "That this Draft Report, as amended, be the Report of this Committee to the House."—The Committee divided:

Ayes, 9.	Noes, 3.
Sir Henry Jackson.	Mr. Hopwood.
Mr. Bulwer.	Mr. Macdonald.
Mr. Walter Stanhope.	Mr. Shaw Lefevre.
Mr. Wyndham.	
Mr. Knowles.	
Mr. Tennant.	
Mr. Ripley.	
Sir Samuel Gooch.	
Mr. Eustace Smith.	

Ordered, To Report, together with the Minutes of Evidence, and an Appendix.

EXPENSES OF WITNESSES.

NAME OF WITNESS.	Profession or Condition.	From whence Summoned.	Number of Days Absent from Home, under Orders of Committee.	Allowance during Absence from Home.	Expenses of Journey to London and back.	TOTAL Expenses allowed to Witness.
				£. s. d.	£. s. d.	£. s. d.
Crawford, William	Secretary of Miners.	Durham	2	1 – –	2 17 –	4 7 –
Ditto	Extra allowance	–	–	– 10 –	–	
Pickard, Benjamin	Secretary of Miners.	Wakefield	2	1 – –	2 – –	3 – –
Cook, Henry	Secretary of Miners.	Dunfermline	3	1 10 –	4 9 9	5 19 9
Blake, E. N.	Barrister	Dublin	3	9 9 –	5 4 9	14 13 9
Brown, William	Miners' Agent	Hanley	2	1 10 –	1 11 2	3 1 2
Knight, Robert	Secretary of Shipbuilders, &c.	Liverpool	2	1 10 –	2 3 6	3 13 6
Gillespie, John	Secretary	Falkirk	3	2 5 –	4 10 –	6 15 –
				TOTAL £.		41 10 2

MINUTES OF EVIDENCE.

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MINUTES OF EVIDENCE.

Friday, 20*th April* 1877.

MEMBERS PRESENT:

Mr. Bulwer.	Mr. Lowe.
Mr. Gibson.	Mr. Macdonald.
Sir Daniel Gooch.	Mr. Ripley.
Mr. Hopwood.	Mr. Eustace Smith.
Sir Henry Jackson.	Mr. Walter Stanhope.
Mr. Knowles.	Mr. Tennant.
Mr. Shaw Lefevre.	Mr. Wyndham.

THE RIGHT HONOURABLE ROBERT LOWE, IN THE CHAIR.

Mr. WILLIAM CRAWFORD, called in; and Examined.

Chairman.

1. WHAT is your occupation?—I am Secretary to the Durham Miners.

2. Is that a large body?—It is a body of some 40,000 men.

3. You are aware of the subject that is referred to this Committee?—Yes.

4. Namely, the question whether the right of miners (in your case) to receive compensation for injuries should be extended or not?—Yes.

5. What is it that you have to say on that question?—Would you permit me to read my views very shortly?

6. Will you do so?—My own opinion is that the law of compensation is not extensive enough. The distance between the owner and the workmen is so great that the present law but very seldom reaches the former. As an illustration of what I am saying, I would beg to take the mode of working mines in the North of England, that being the class of work and the part of the country with which I am best acquainted. The moment an underground workman enters the cage to descend the mine, his life is in the hands of a person, between whom and him there is not the least common employment. They are entirely different classes of workmen, engaged and overlooked by different managers, and between whom there is not the least oneness of employment. Nevertheless, by the negligence and oversight of these men, numbers of men and boys in our mines have lost their lives. But again, in the mines of the North of England, various classes of workmen are under various managers, and some classes

Chairman—continued.

of workmen under three or four different chargemen. First, we have what is called the consulting manager, or mining engineer, having charge, in many cases, of eight or 10 pits. Following him are under managers, overlooking, it may be, two, three, or four pits. Then, again, comes the resident or certificated manager, having, as a rule, charge of one pit. We have, following these, the over-man, the back over-man, the master shifter, and recently the owners have declared that the deputies are agents or responsible or charge-men, the latter being a class of men who, in the county of Durham alone, number not less than 4,000 hands. We have here, between the owner and the workmen, a great number of men having different powers, but all having charge over the *bonâ fide* workmen or coal hewers and others, the whole of whom, individually and collectively, are doing that which a small employer does, when he superintends the mine for himself, and should any workman sustain any injury by his direction, and arising out of carelessness or inability, such workman would have a claim against him. In common fairness and equity, I think that if the individual employer is responsible for his own act, so the owner who delegates his authority for the carrying on of the work to one or many, ought to be responsible for the acts of all those that do what he himself would do if he did not so delegate his power. Yet if the negligence or incompetency of any one of these men, or of all combined, cause the death of either one man or any number of

Mr. *Crawford.*

20 April 1877.

Mr. *Crawford.*

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Chairman—continued.

men, the owners are at the present time beyond the reach of the laws. Instance upon instance might be given of what I am now saying. Take one as illustrative of many. Some four or five months ago, three men and one boy lost their lives by an explosion of gas in a mine in the county of Durham. The cause of the accident was so clearly brought home to the negligence of the certificated manager, that a court of petty sessions fined him 20 *l.* and costs. But there the matter ended; the owners or even the head manager being beyond the reach of law, although a widow and three children were left unprovided for. Still, while the cause of the accident was brought so clearly home to the negligence of the person having charge of and acting directly for the owner of the mine, we could not claim, by the operation of the present law, the least compensation. During an experience extending over 33 years in and about the mines of the north of England, I have known many cases where the source of the accident might be clearly traced to the neglect or inexperience of those in charge, but not one where compensation has been got, because the present law does not touch the owner unless the accident is proven to have been caused by his personal direction. What we complain of is, that while these various men have full charge of the mines, some wholly and others at their arranged times and in their appointed districts, whatever may happen from the negligence or incompetency of any of them, from the consulting engineer, who walks side by side with the owner in his social position, to the man having charge of a district and a number of men so many hours every day; if, from the fault of any of these men, a man or any number of men are killed, the owners are, by the present law, free from pecuniary responsibility, so that however culpable their agents may be, not one penny of compensation can be got. You will more clearly see the injustice complained of when you are told, that by special rules submitted to and passed by the Home Secretary, the workmen are legally bound to obey every order of every one of these charge-men. It must not be supposed that I am advocating the payment of compensation for every accident that may occur, whether preventable or not. But where an accident occurs, which is afterwards proven to have been preventable, had it not been for the negligence or incompetency of those in charge, acting for and on behalf of the owner, then I think the said owner ought to be held legally responsible for the misdoings of the person so acting for him. While the law continues as at present the owner can employ whom he likes to overlook his work, knowing that if any adverse results should arise from the acts of such a person, he is beyond the reach of the law. Again, as I have said, the present law is anomalous, inasmuch as the man who is not rich enough to employ an overlooker, but must manage and overlook his own business, is by the law held responsible for any accident occurring under his own management, which might by ordinary caution and ability have been prevented. But the moment he is wealthy enough to employ an overlooker or manager, he is free from any fear of the law, seeing that it treats every person between the owner and the workmen as a fellow-servant, irrespective of what charge such person may have, or what blunders he may make. Much is said as

Chairman—continued.

to the responsibility of owners and managers in the working of mines. At the present time, however, their legal responsibility is nil. Reflections on, and suggestions for, the future guidance of owners and managers, by coroners, jurymen, and Government inspectors, are very common, but convictions are of very rare occurrence indeed. But the increased legal responsibility we seek in no way invalidates our claim. Mine owners begin to work mines, and workmen work in them, fully cognisant of all the risks to be endured. But the workman has a right to expect, and does expect, that in following his hazardous occupation his risks will be reduced to a minimum, both by the establishment of every modern scientific appliance for the safe working of mines, and also by those in charge exercising the most vigilant watchfulness and the utmost caution. Even when this is done, accidents will still occur. But of whatever nature an accident may be, if there has been exercised, by those in charge for the time being, necessary care and competency, we do not seek to hold either owner or any one else responsible for such accident. We only seek to render an owner responsible when in evidence it is shown that such accident might have been prevented by an exercise of necessary caution and ability by those in charge, and to whom for the time the owner had delegated alike his power and responsibility.

Mr. *Knowles.*

7. You say that the miners are in the hands of people with whom they have no common employment the moment that they get on the cage?—Yes.

8. Who are the people in whose hands they are?—The engine-men, who are in some measure charge-men, having in their hands the lives of a great number of men and boys.

9. Charge-men are not assumed to be there when miners get on the cage at the top; you said that the first step that a miner takes he incurs some danger from a person that he is not commonly employed with, that is to say, whom he has no community of employment with?—That is from the engine-man.

10. How would the miner get to his work without the engine-man?—Not very well.

11. Still there is no common employment between the two, you say?—We say that if you do employ men totally incompetent for that work you are, or ought to be, held responsible for the misdoings of the men.

12. Have you ever heard of men objecting to an engine-man, or over-man, or a manager, in consequence of their incompetency?—Yes.

13. And have you ever known a case where the master, in face of that objection, continued to employ them?—He has done so.

14. You have known such cases?—Yes; I could not cite them at this moment.

15. Have you no cases in your mind?—Not at this moment. I have known them in the case of engine-men, and likewise charge-men, down the pit.

16. Is that recently?—Yes, recently.

17. Have you not one in your mind if it is a recent thing?—In the case I have now cited in the reading of my statement, where an explosion took place and killed three men and one boy, the men there desired that the manager should be dismissed; however he was kept on the colliery as usual.

18. Was

Mr. *Knowles*—continued.

18. Was that before the explosion that they desired his dismissal?—No, following the explosion; in consequence of it.

19. They had not objected to him before then?—No.

20. Then, as regards the mining engineer you referred to, is he the certified manager?—No, not as a rule.

21. You are aware, of course, that all the managers have to have certificates from Government before they can manage a mine?—Yes.

22. Do you think that that has improved the previous state of things as to the management of mines?—I could not say that yet; the time is too short to tell you.

23. You think that the Mining Act has not worked sufficiently long to prove that?—No.

24. You are aware that workmen have power to examine the state of the mine, and the machinery, or anything connected with it, for themselves, to see whether it is dangerous or not at any time?—Yes.

25. Do they avail themselves of that rule of the Mines Act?—Many of them do; some do not.

26. But have you ever heard of their complaining of the incompetency of a manager in those cases where they do avail themselves of it?—I could not say that just now.

27. You do not know?—No.

28. You say they ought to be compensated for a certain number of things which occur, in consequence of what you have stated. Would you limit that compensation at all?—Do you mean in value, or in number, or what?

29. I mean as to the amount of compensation?—No, I would leave that to a jury.

Mr. *Bulwer.*

30. Do you suppose that in all cases where a workman is injured through the negligence of a fellow-workman who may be in a superior position to himself, the master ought to be liable, however competent or incompotent that workman may be?—No, I say this: that so soon as a man takes charge of other men, and the *bonâ fide* workmen are legally obliged to obey his orders, then the employer ought to be responsible for the adverse results arising from the man's acts.

31. Whether the employer has made every effort or not to insure the competency of the person he employs as overlooker, or otherwise?—That is the owner's own business. If they employ incompetent men they ought to be held responsible in every case.

32. Supposing I have a perfectly competent butler, and he, through negligence, drops a heavy dish on the cook's toe in the kitchen, you would say that I ought to be responsible; or do you limit it in any way?—I do not know that in that case the butler had charge of the cook. I am only saying where a man is placed in charge by the owner over other men, and where these men must obey that man's orders, then I think the owner ought to be held responsible.

33. However competent the man may be whom he employs, and whatever care and precaution the master may have taken before he has employed him to ensure that he is employing a competent man?—That is the owner's own business; of course, if the man had exercised ordinary care and competency in doing his business, then I do not seek to hold the owner responsible.

Mr. *Bulwer*—continued.

34. But I will assume that you yourself are the owner of a mine; of course, you must employ persons, competent or incompetent, to discharge the duties incident to carrying on the business. You employ, say an engineer, perfectly competent to discharge his duties; you are not able to be there to superintend him yourself, and through his negligence an accident occurs, and a working man is injured. You say you ought to be held responsible for that?—Clearly so; because if the engineer has exercised necessary competency and caution, then the owner would not be responsible; but the moment that he is negligent and causes an accident thereby, that at once supposes that he has not exercised caution.

Mr. *Hopwood.*

35. As I understand it, you are consistent in that. Supposing you were working your own mine under your own superintendence, you would be, by law, liable to that workman for any act of negligence, or imperfect materials supplied?—Yes.

36. And you seek to put the larger employer in the same position when he substitutes some one in place of his own care and responsibility?—Just so.

37. Taking the case of the butler and the cook, I believe it is the law, is it not (I do not know whether you know it), that a gentleman may use as much care as he pleases in securing a competent coachman, and yet he is liable for that man's negligence or incapacity?—That is the law, as I understand.

38. I understand you draw the distinction, that where the men are given over, as it were, in charge of some one competent, and having authority to do all that is needful, the employer of that man should be liable for his negligence or misconduct?—I think so.

39. With regard to a fellow-workman, I did not understand you to say, that if two men are working side by side in some part of the mine, and one should, through negligence, strike the other with a pickaxe, or by his negligence cause an explosion, you would then make the master liable for that?—No.

Mr. *Knowles.*

40. In the case of mines, do the men employ assistants, or others to help them?—Not with us.

41. Do you know if it is the case generally in England?—I do not know.

42. You know nothing about any other business, except your own district?—I am now speaking as to the mode of working mines in the North of England, the two northern counties.

43. You have been asked with regard to a coachman; if he committed any negligence which injured a stranger, his master would, of course, be responsible; but supposing the coachman was driving his carriage, and by his carelessness he upset the footman, would you consider that the master ought then to be responsible to the footman?—No, I would not.

Mr. *Macdonald.*

44. You were asked by the honourable Member for Wigan if the workman complained of the conduct of a manager according to the power he had under the Act; you know the Mines Act?—Yes.

45. Is there any provision in the Mines Act for

Mr. *Crawford.*

20 April 1877.

Mr. *Crawford.*

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Mr. *Macdonald*—continued.

for the workmen complaining regarding the conduct of a manager?—Not that I am aware of.

46. Does not the provision consist exclusively (the 30th general rule is the rule that I refer to) of reporting on the condition of the mine?—It consists in that alone.

47. So that if you reported on the conduct of the manager in any way, would you not be travelling out of the limit of what the law allows?—Clearly so.

Mr. *Knowles.*

48. Is there anything in the Mines Act to prevent the men complaining of the incompetency of the manager, supposing they think that he is incompetent?—There is nothing in the Act to empower them, as persons examining the mine, to complain; as workmen they can complain.

49. There is nothing to prevent their complaining?—Not at all; but the Act does not say that that is a portion of their work in examining the mine to criticise the manager's competency, or otherwise; their work simply is to examine the mine, and record their observations in a book at the pit bank.

50. But supposing the workmen considered the mine to be in a dangerous state, either through negligence or anything else, is it not reasonable to suppose that they would complain, and cease to work in the mine?—They would complain of the danger existing, and ask to have it remedied, but they would not ask to have a manager removed unless there was gross negligence patent in the management of the mine.

51. These managers are generally known to the workmen very well as to their moral conduct and ability, are they not?—Sometimes too well.

52. Then if they know anything wrong of them at the time of their undergoing examination for certificates, they have an opportunity of opposing them, have they not?—As a rule they do not know that they are going to be examined.

53. Are not the names advertised in local papers?—I am not aware that the names are advertised.

54. But the examiners are known; they are a public body, and notice of their names is given; do you happen to know the examiners for your district?—Yes.

55. Is there anything to prevent you or anybody else taking an interest in it, knowing the names of the examiners?—They are known very well.

56. And the time of their meeting is known very well?—I believe that is so.

57. It is made public through the public prints,

Mr. *Knowles*—continued.

is it not?—That may be so; but very few workmen read the advertisements.

58. As representative of the workmen, do not you read them?—Very seldom.

59. Do not you feel it part of your duty, as representing and trying to protect these workmen, to read advertisements as to the time of meeting of the examiners who are to appoint those anxious to be managers?—If I knew it was advertised I might read it. I have one of my own colleagues who is one of the examiners.

60. Is he a representative of the workmen?—Yes.

61. Do you suppose he does not know generally those people that come up to be examined?—I very much question it.

62. But he sees how they acquit themselves?—He must do that.

63. And if the board of examiners were going to give a certificate to an incompetent man, would he not protest aginst it?—I presume so.

64. Have you ever known an instance where he did protest against it?—I never asked him.

Mr. *Tennant.*

65. Taking a mine, could you define more specifically how far you would extend the liability of the owner for those in charge; you say that you would not make a master responsible for the acts of a fellow-workman; I want to know, taking a mine, if you can define those in authority for whose acts you would consider the master to be responsible?—I would say that with regard to every person from the owner to the ordinary workman having charge of one man, or a number of men in the mine, the owner ought to be responsible for his acts. With us the lowest class I know of such men are deputies; they are now called agents or charge-men; I would hold the owner responsible for them.

66. Then you would extend the liability of the masters to the acts of deputies?—Clearly I would, because they have charge of the districts of the mine so many hours every day; in some cases having 20, 30, or 40 men and boys under them.

67. And you would hold responsible all intermediate between the deputy and the master?—Clearly.

68. And that, even supposing that a very competent man had been appointed as deputy?—But if he exercised competency and caution, then, of course, the owner is free from responsibility.

69. But the master must not only have selected a competent person to begin with, but that man must have discharged his duty properly afterwards?—Clearly so.

Mr. Benjamin Pickard; called in, and Examined.

Chairman.

Mr. *Pickard.*

70. What is your employment?—Secretary to the West Yorkshire Miners' Association.

71. You are aware of the subject of this inquiry?—Yes.

72. Have you any statement to make to us?—I would like to read my statement, if you please.

Mr. *Hopwood.*

73. What is the body that you represent?—

Mr. *Hopwood*—continued.

I represent in this capacity the whole of Yorkshire.

74. What number of miners?—Somewhere about 60,000 people employed in Yorkshire about the mines.

Mr. *Walter Stanhope.*

75. You speak for West and South Yorkshire?—For both districts.

76. Will

Chairman.

76. Will you proceed to read your statement?—My reasons for saying that there needs an alteration in the present law regarding compensation are because the work of a miner is very dangerous, and, owing to much neglect and incompetency of managers, many and serious accidents occur, resulting in great loss of life and permanent injury as well, which leads me to the conclusion that the law is very unsatisfactory. I am strongly of opinion that all accidents occurring through negligence ought to be compensated for by the employer. If the employer was liable for compensation in cases of negligence, in my opinion there would be less accidents, and it would also be a great good to the workman. Owing to the law, as it now stands, the men have to provide in a great measure for those who are killed and permanently injured, and for ordinary or light and temporary accidents. In Yorkshire, during the past three years, men have been compensated to the amount of about 29,000 *l.*, in grants, donations, and weekly payments to widows, &c. During the last five years, according to the Blue books, as recorded by Mr. Wardell, one of Her Majesty's Government Inspectors (viz., 1871–72–73–74 and 75), there have been no fewer than 711 persons who have lost their lives in and about the mines in Yorkshire alone. Of this number 259 have lost their lives by explosion of fire damp, 248 by falls of roof and coal, 64 in shafts, 86 of a miscellaneous nature, such as being run over by tubs on the engine planes, explosion of gunpowder, &c.; and 54 above ground, by falling off pit hill, and other causes. Now, in my opinion, many of these accidents might have been avoided had proper care, judgment, and foresight been taken. Many explosions would not occur if the Mines Regulation Act was strictly carried out, viz., if the mines were properly ventilated and made free from gas, or so diluted as to render the same harmless. For instance, if, as the coroner, and jury, and Messrs. Wardell and Evans say, there had been no carelessness at the Morley Main Colliery, there is every probability that the explosion which occurred on the 7th day of October 1872 would never have occurred. If the colliery had been examined and the air distributed in sufficient quantities, and other precautions taken, which are absolutely necessary in mines giving off large or small quantities of gas, there is more than a bare probability that this fearful accident, resulting in the death of 34 persons, would not at this inquiry had to be referred to. In a case like this, where managers and deputies are found at fault, the owners should be held responsible for their actions, and held liable to compensate the injured or the killed. Also in the case of the explosion of fire damp which occurred in the pit shaft at the Dark Lane Colliery, belonging to Messrs. Leathley, Nevin, and Barroclough. This accident happened through gross carelessness and neglect, both on the part of the manager and others, whereby four men lost their lives. In this explosion sufficient evidence was got, so that Mr. Wardell induced the Home Secretary to prosecute the manager, which resulted in the magistrate fining him 10 *l.* Our West Yorkshire Miners' Association took counsel's opinion as to whether we could sue the firm in this case for compensation, but, to the serious loss of those killed, that opinion was adverse; therefore, proceedings were stayed. Also, I may further in-

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stance the explosion which occurred at the Gawthorpe Colliery, near Dewsbury, and owned by Messrs. Haigh. This explosion again manifests both carelessness and incompetency, and a boy, named Lister, lost his life thereby, and another person was seriously injured. Both manager, stewards, and deputies in this case were proceeded against, the manager being fined 5 *l.* and costs, and the others refered to 5 *l.* each and costs. Then I might mention the explosion at Methley Junction, belonging to Messrs. Briggs, and the Swaithe Main explosion, belonging to Messrs. Mitchell, as being instances where there had not been proper precautions taken to prevent accidents; which, all of them, go to prove the great danger existing in coal mines, and the necessity for the alteration of the law of compensation to those receiving injury. Then I might instance the accident which occurred at the burning down of the head gear at the Glasshoughton Colliery. owned by Mr. Thorpe. At this colliery, during the repairs going on for establishing proper communication with the bottom, two men were being lowered into the mine by temporary means; the engine-man, from some unknown cause, lowered the men so quickly that, instead of arriving safely at the bottom, they were precipitated on the sump-boards with such violence that both were either killed by the fall, or drowned in the sump. In the evidence before the coroner and jury both parties contradicted each other. The verdict of the jury was to the effect that the engine-man be committed for trial for manslaughter. Also it came out that the sump-boards were not broad enough to cover the open space, which, if they had been, perhaps one, at least, might have been saved. I am of opinion that the manager in this case was much to blame in not seeing that he had a thoroughly competent engine-man, and that the sump-boards were properly placed, and a sufficiency of them to cover the whole space, knowing the same to be extremely dangerous otherwise. These, and other accidents, lead me to the conclusion that all employers of labour, who either superintend the work themselves or delegate their authority to others, ought to be held responsible for all the orders they give, and for every accident which causes serious injury to the workmen such employer engages to do the work he may require performing. I believe, so far as coal mines are concerned, that the owner should be held responsible for all accidents attributable to neglect other than that of the person injured. I am of opinion that if a coalowner engages a certified manager to superintend, or a consulting engineer, he should be held responsible and liable for any action they may take in the management of such mine. Also for any result following the relegation of their powers, either to deputies, deputy steward, or to any person having the life and limb of the ordinary workman in his hands to any extent. I do not think that because any of these men (or all of them) are working for the same owner that should be a valid objection that their common employer should not be sued. It should be no ground of defence that the person is employed in what is known by "common employment," or that the person does it voluntarily and with a full knowledge of the risk incurred by the person injured or killed in the course of his employment. Further, I am of opinion that if the Bill, or one similar to the one brought into the House of Commons in February 1876 by

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Mr. Macdonald, M.P., and others, become law, the employers of the mines of this country will engage better and more competent managers, stewards, fire-triers, deputies, and shot-lighters underground, and more and better qualified men above ground; because the accidents which occur by falls of roof-coal, in the shafts and along the engine planes and horse roads, to a great extent are of a preventable nature. And anything which will cause greater care, more strictness in carrying out rule, and earnest desire to prevent accidents, will be a great saving both to employers of labour and to the labourer himself.

77. Did you hear the evidence of the last witness?—Yes.

78. Do I understand you to agree with him, or not, in his recommendations; I cannot quite make out from your paper?—I agree with him so far as going to the extent of making the owner responsible, as far as he says, down to the deputies; but I further think he should be responsible in a case like that which has come under my own observation, and which I will state. When I worked in the mines in one place, especially during some parts of the day, the working place was quite clear of any kind of gas, although we worked with lamps in that particular place; but in the course of an hour or two, without any fall of soot, without anything to disturb the current, the gas would fill the place nearly, a sort of white gas; and in a case like that, my opinion is, that if an explosion occurs, the men who suffer injury ought to be compensated; the owner ought to be liable in a case like that.

79. Why do you think so; the owners in the case you put would not have been to blame, would they?—Because although there is great risk in the mine, the miner ought to be compensated for that risk. One reason is, because the miner works for a specified wage, while the owner receives all the advantage and profit in the sale of the material which he produces.

80. Then you think that, for instance, if a miner neglects to protect his lamp, and there is an explosion occasioned by that neglect, the master ought to be responsible for that?—No; wherever a miner clearly neglects to attend to his own duties, I could not make the coal owner responsible.

81. Then I do not quite understand you; is there some danger where nobody is to blame, do you mean; in this case nobody would be to blame for the sudden efflux of gas, would they?—In that case I do not see that there would be anybody really to blame.

82. Then you think that the master ought to compensate the workman in such a case?—Only there is this, that in cases of this nature, the deputies know all about it, and there should be keener supervision; the deputies ought to oftener go into these places, in order to see whether the places are clear and workable.

83. But still this might happen without any fault of the deputies?—That is so.

84. What would you do in that case?—In that case, as I have already stated, I think the men ought to be compensated.

Mr. *Knowles.*

85. You have just said that the working place might be quite free from gas, and then, during the time that you were working, there would be some collected; you call it white gas?—Competent men call it white gas.

Mr. *Knowles*—continued.

86. Is that explosive gas?—I suppose so; they tell me so.

87. How long have you worked in a mine?—Sixteen years about.

88. Is that recently?—I have been out four years.

89. Have you seen much gas?—No, I have not; the mines I have principally worked in have been pretty clear of gas.

90. Because it is the first time that I have heard explosive gas called white gas?—It is mixed with that, as you can both see it and smell it.

91. Before an explosion, do you mean?—I never knew it to explode.

92. Have you worked in this gas, that you could both smell and see?—Yes.

93. Which was of an explosive character?—I have been told so.

94. Could you not try it with your lamp?—We are not allowed to do so. I have tried the gas, certainly, but only in this way, simply just to see if it would draw the light at all.

95. Would you explain to the Committee how you do with the lamp when you try it, or want to see if there is any gas in your place?—If I were going to try it, I should do it in this way: simply put the lamp flat on the bottom of the working place, and get hold of it at the bottom, and steadily raise it, and watch through the gauze in order to see whether the light was drawn in any way at all. That would be the way I should test it.

96. Would you lessen the light at all that is in the lamp?—Not if I were going to try it for my own safety for working; I should let it stay at the light the deputy had given me.

97. You would not bring down the light in the gauze of the lamp to its minimum?—Not if I am trying to know whether I can work in it that day.

98. I mean trying the place to see; if you suspect that there is gas in your working place during the time you are in it, and want to satisfy yourself, how would you notice whether there is any gas or not?—I have no doubt I should draw the wick down; but on the other hand, in order to fairly test whether I could work in the place, the safest way would be to leave the light as it was given to me by the deputy.

99. You think you could test it by that?—Yes, if it were carefully done, I think so.

100. Could not it be much more easily done by drawing down the light and making it a very small one?—I do not know that it would make any alteration whatever in the result.

101. But with regard to the gas which you have seen and smelt, have you ever tried that to see if it was explosive?—No.

102. Though that has been in your own place, and you suppose it to be explosive gas, and you could see it and smell it, still you did not try it?—No; I should have made myself liable if I had done that.

103. If a miner tries his own place with his own lamp, is he liable for the consequences?—As I take it, the Mines Act says, that certain parties shall try the working places, and that it is not competent for the ordinary workman to do so;

Mr. *Knowles*—continued.

so; if he does so he is doing something which he is not authorised to do or expected to do.

104. But does not the Mines Act state that a competent person shall examine the places to see that they are safe before the miner goes into work?—That is so.

105. And when he has done that and seen that it is clear, and the miner is left in it to work in it, then you say, that although the place is clear at first, in a short time there may be gas in it?—That is so.

106. No doubt you may liberate the gas by hewing the coal?—I believe in this particular place it is not hewing the coal that made the gas; in this particular place that I am referring to, there was a coal roof and a very thin one, and then there was no rock, but a sort of loose matter for 19 or 20 yards up, and the deputies thought that that was the place where the gas was given off.

107. But, assuming that the place was clear when you went, is it not reasonable to suppose that your working would disturb the elements that had gas there?—It has been for several days when there have not been any falls of roof at all. In working the long-wall system, you sometimes have to go for nearly a week before you get to the end of the bank, and then there are no props drawn off, not to disturb the length of the working places.

108. Now, in collieries in Yorkshire, do the men employ any assistants themselves?—I believe every man is engaged by the manager.

109. And the boys too?—I do not know that it is so in every case as far as the boys are concerned, but I believe they are so engaged.

110. Who employs the drawers, or the hurrier, or the putters, or whatever you call them?—The manager employs them by setting them on.

111. Who engages them?—The manager.

112. Who pays them?—Well, I suppose the employer.

113. There is no supposition about it; you know what is the general rule in Yorkshire, whether the men or the employer engage these putters, as you call them?—To put it this way, the manager engages the men and those who are with them, hurrying round, going from one man to another, and fetching their corves away. In some places the boys are paid by the ton.

114. Not by the colliers?—Not by the colliers at all. In other places the boys are paid so much a day by the men, but the owners pay the whole price. If you go round about Dewsbury, for instance, the men have to pay the hurriers; but the owners pay them so much a dozen or so much a ton, and the men have to say what the boy shall have; and in many instances the manager stipulates that the boy shall have so much money; in fact, in the recent advances and reductions, the managers have said that the boys should go up and down with the men; in fact, that is clearly defining what the boys shall have.

115. Now as regards this 29,000 *l.* odd that the injured men have had, you did not tell us the source from which they got it?—They got it from the Miners' Association.

116. Is that a provident association?—We pay 1 *s.* a week contribution, which with us entitles every man at death to 6 *l.*; and if he leaves a widow, his widow gets 4 *s.* a week; and if she has any children they get 1 *s.* each.

Mr. *Knowles*—continued.

117. That is a provident and accident association?—Yes; they are all connected, as far as our men are concerned.

118. What does each boy pay?—Half price, and receives in proportion.

119. This is only in case of accidents, I suppose; not for sickness?—For sickness too; both sickness and accident.

120. If a man is off sick he gets the same amount as if he were hurt, does he?—He gets 10 *s.* a week in both cases; and if a man is permanently injured we give him 5 *s.* a week, and 1 *s.* a head for his children so long as he lives, he having received 10 *s.* a week for six months, and then 5 *s.* a week for six months.

121. Do the masters contribute anything in Yorkhire?—No; not anything.

122. Do the men pay anything more to this association besides the shilling a week for the accidents?—No; not unless we have a levy.

123. Have you ever made any levy?—We have made levies in trade disputes.

124. What is the highest weekly levy you have made?—I believe 2 *s.*

125. Two shillings, in addition to the 1 *s.*—Yes, 2 *s.* in addition to the 1 *s.*

126. Now when these accidents do occur, do you attend the inquests?—Some of them.

127. You are never refused attending them?—No; I have never been refused attending any.

128. So that it is optional with yourself whether you do attend or not?—That is so.

129. Have you done so in those two cases that you have mentioned, particularly the case of the engine-man that you referred to, who caused the death of those two men, by letting them down too quickly; and was the manager censured at the inquest for employing that engine-man?—The manager was not censured, but the evidence that was given clearly proved that the manager was at fault, especially as regards the sump boards, and having his present engine-man. He had just before got rid of two very competent engine-men, and it was stated that the engine-man that was there then was not competent; and I believe after the accident another engine-man was appointed.

130. I suppose he would do some injury to the property of his master, as well as killing these poor men?—I do not think there was much injury done to the property.

131. I wanted to know whether you thought there had been any objection in consequence of the man's incompetency, or whether the men, or manager, knew he was incompetent before he was employed, before the accident?—The men thought he was incompetent.

132. Had the men ever told the manager he was incompetent?—I will not be sure whether they had told him or not.

133. You referred to one reason why the master should compensate in all these cases of injury, because the master was the worker of the mine, and sold the article, and received the profits?—Yes.

134. Do not you think he has to sustain the losses at the same time?—He has, when there is a terrible explosion.

135. Whether there is an explosion or not. Take thepresent time with regard to the coal-pits in Yorkshire; do you suppose that masters are receiving much of a profit now?—If I go to the

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published balance sheets I find that the owners are making profits.

136. Is that generally the case?—I have never found a case yet where they state a loss.

137. How many have you looked at?—I do not know the names of the whole. I have never found a balance sheet yet that shows a loss.

138. Do you think it is to the interest of the employer or not, to employ the most experienced and careful managers and men that he can get?—I should think it is to his interest to employ the best men he can find.

139. Because when such accidents as you have referred to do occur, is there not a very great destruction of property as well as loss of life?—Yes, I believe the owners, as a rule, lose more that way than by any other means.

Mr. *Wyndham.*

140. As to this fund you spoke of, from which the compensation has to be paid, is it all part of the Trades Union Fund?—It is all one common fund.

141. It is one common fund with the Trades Union you say; this fund from which the compensation is derived is not a separate affair altogether, is that so?—As far as West Yorkshire is concerned, that is so; but in South Yorkshire theirs is divided.

142. But in the particular case which you mentioned, it is all one fund?—Yes.

143. Then I suppose that may, to a certain extent, explain the fact which you mentioned in answer to the honourable Member, that none of the masters subscribed to it?—I do not know whether that is the reason or not.

144. Is not that probably the explanation?—I do not see why it should be.

145. Was this 29,000*l.* compensation for accidents only, or for deaths from natural causes?—for accidents; for permanently injured members and temporary accidents.

146. And do you think that the whole of that 29,000*l.* ought to have fallen on the masters?—Well, that I could not speak to; because, as I said before, I would not make the owner responsible where the man directly contributed to his own injury.

147. Did I rightly understand you to say that you knew of cases where the provisions of the Mines Regulation Act were not properly enforced, and had not been enforced?—I attended that coroner's inquest at this Gawthorpe Colliery explosion, belonging to Messrs. Haigh, and it was clearly proved there by the witnesses, and by the admission of the manager and deputies, that the provisions of the Mines Regulation Act had not been carried out.

148. Now what remedy has the ordinary workman in a mine, if he sees under his eye that the Act, in some particulars, is not being carried out?—I do not think he has any remedy at all.

Mr. *Stanhope.*

149. With respect to this fund for compensation to injured men and widows, I think it was instituted shortly before the late Oaks explosion, the first explosion, by the South Yorkshire Miners' Association?—Yes.

150. And did they meet the liabilities incurred by that explosion fully, up to within a very recent time?—I think they do now.

151. That being part of the union funds, there

Mr. *Stanhope*—continued.

never was any contemplation that the masters should contribute towards it; the main object of that fund would be to protect the men's interest as against the master's interest, would it not?—No, I do not see it that way. The reason why the men formed these adjuncts to their trades' union is because if a man happens to have an accident, there is very little possibility of getting anything from the employer.

152. That being part of the South Yorkshire Miners' Union Fund, would not be a fund to which it would be possible for masters to contribute; that was not contemplated?—It was not contemplated by the men that the owners should contribute to it.

153. But there has been an attempt, from time to time, to establish a permanent Miners' Accident Fund, has there not, in Yorkshire?—Within this last three or four months there has.

154. It has been contemplated before; at the time of this Oaks explosion there was some more move made towards it, was there not?—It has been talked about.

155. Was that favourably received by the members of the Miners' Union?—The Miners' Union have never objected to that.

156. Was there not a meeting at Park Gate lately where they did object?—Not that I am aware of.

157. However, such a fund is in process of being started now, is it not?—The officials of the association are not at all opposed to that; what the officials have tried to do is to get the present fund that has been established to take over their widows, so that the miners might not have anything to do with them in future, or have anything to do with that part of their fund.

158. That was subsequent, I think, to that meeting to which I refer at Park Gate?—An actuary is now going through the books in order to find out what would be the amount to be paid over.

159. And if that fund is established, then the masters will contribute on a scale to that fund?—They do not say they will.

160. Is that not a part of the scheme?—They have never given any pledge that they will do so, as they have done in Northumberland and Durham.

161. Is it not the scheme started on precisely the same basis as the scheme in Northumberland and Durham by those about to manage it?—It is contemplated that the owners shall contribute.

162. Now, I understand you to limit the owners' liability in the case of miners, to the accidents of those who have men under their charge as deputies and onlookers, and so on?—Yes, except in the case that I have pointed out to the Chairman.

163. Will you explain the limit; am I right in understanding your view to be that if an accident is caused by a miner's negligence, and other miners suffer from that accident, you do not hold the master responsible in that case?—I do not hold the master responsible to the man who directly causes the injury to himself, but to the others who have to suffer in consequence, as at the Swaithemain explosion; it was tried to be established that one man had fired a shot.

164. Supposing that had been proved?—I think that if that had been proved, the man who deliberately fired the shot, not in accordance with the regulations, was punishable; but the others who

Mr. *Stanhope*—continued.

who lost their lives the owners ought to be responsible for.

165. You think that in that case, supposing it was established that this accident was caused by a man acting contrary to all instructions and rules of the pit, nevertheless the owner should be responsible for the consequences, except as regards the man himself?—Yes.

166. Do you think it possible, from your knowledge of mining, that a pit should be kept ventilated so as to be safe under all possible circumstances?—That is putting the question very broadly. I told the Chairman I thought there were cases where an accident might occur where every precaution had been taken.

167. It is said now, sometimes, that if the Mines Regulation Act was properly carried out, pits ought to be safe under every possible circumstance. You think that is not possible?—I believe it is possible, although I would not say under every circumstance; but, under ordinary circumstances, in every mine it is possible to have the air so distributed as to dilute the noxious gases that are given off.

168. Under ordinary circumstances?—Under ordinary circumstances.

169. That ought to be so, in your view?—Yes, that ought to be so.

170. But would the ventilation which is sufficient for ordinary circumstances render a mine safe under an extraordinary amount of gas being collected?—If the present Act were so framed that in, say, a large colliery that has been working for some years, where the old workings have not gone to the boundaries, and they are bringing the work back again, and where, in these large areas that are so worked, there are large goafs, these goafs, instead of being as they are now, were winded, I think that would lessen the liability to explosion.

171. Do not the men object very much to a large increase of draught from excessive ventilation?—I have never heard tell of it.

172. You never heard tell of cases of men boarding up the airways in order to lessen the draught?—No, I never heard tell of cases of that kind, and I think if any deputy or manager found it out he would soon let the man know who did it.

173. Do you think that as a general rule, we will say, when anything of that sort is done, or when a man takes matches down with him, or endeavours to strike a pipe, his fellow-men take precautions to bring that man to justice?—First, I would say, that in that respect where the man is allowed to take matches down, that is the fault of somebody else.

174. Do you suppose that every man can be searched, and every one of his pockets?—I think where a mine is allowed to be partly filled with noxious gases (and we know that anything beyond the ordinary will liberate the gas), there ought to be due caution, and every man ought to be searched in a case like that.

175. But do you think that the miners themselves would put up with that?—Yes, I do.

176. However, my question was, whether generally speaking, assistance is given by the miners themselves to bring men before the magistrates who infringe the rules of the mine, and thereby endanger the safety of others. Can you mention any such case?—Your question is this: do some men wilfully go into the mines with

Mr. *Stanhope*—continued.

matches, or do anything wilfully to evade the rules and regulations, contrary to orders, and bring about an accident.

177. No; I say, supposing men do that, do you find, as a rule, that their fellow-workmen who see them infringe the rules, take steps to bring them up before the magistrates for their own safety?—I do not know that they do. In fact, they have no privilege, or right, to say to a workman that he is doing wrong at all. The rule says that he cannot go out of his own working place; if so, he is amenable to the law.

178. You cannot say that, as a rule, if a miner saw another man either unscrewing his lamp or lighting a pipe, or obstructing the air-way, he would then take steps to bring that man before the magistrates. I believe if another man saw him do so he would tell him he was doing wrong, and if he did not give it up he would report him.

179. Has the Miners' Union taken any particular care in order that, on behalf of the men, men who offend against the pit rules should be brought to justice; is that any particular branch of their rules?—We do not go as far as that; we do not say that we will punish them, but we entirely disagree with any man doing anything contrary to general or specific rules in force at the colliery.

180. You do not establish any supervision on behalf of the Miners' Union in order to protect the safety of the men against themselves?—We, at several collieries, have two men appointed to go and make a monthly inspection of the colliery wherein they work, and they are expected to report, and do at some places, I do not say at every place, report to the men at a general meeting afterwards, how they found the colliery; not report in the book, but give a verbal report stating how they found the colliery, and what they thought about the management; and I do not know that they have ever instituted any action; in fact, I do not know that they ever found any case requiring it; I do not know that any of these examiners have found cases where the men have been acting contrary to rules.

181. The Miners' Association take very great precautions (and very properly so) to bring the managers or owners of the pit to justice, or to report against them, in case the safety of the men is endangered by any negligence in the place, or in the condition of the pit; that is so, is it not?—They did so some time ago, soon after the Act was put in force, thinking that they were protected, as militia men or soldiers are, in making any report. Although directly we cannot say that men have lost their employment for giving adverse reports, yet I find that men, after they have been round a colliery and given a report in, have not had to work at that colliery long; and you know that in cases of this kind it is very difficult, where a man's living is at stake, to speak out boldly. It needs a man with much moral courage to state clearly how he finds a mine, if he has any fear of that kind before him; and in some cases I have dissuaded the men and advised them not to publish any report at all, but simply to report it in the book of the colliery, and then the inspector of the mine will see it when he goes there.

182. I want to know whether it is not true that the Miners' Association, as a body, are active in exposing any danger arising to the men (very properly so) from the state of the pits, but that they

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they do not take the same steps to protect the men from the illegal acts of each other. I believe that they might assist the magistrates very much if they would establish a system of supervision against the illegal acts of their own workmen; I should like to know whether it is not the case, that while they take care to report any dangerous state of the mine, they have not the same provision for protecting the men against the illegal acts of each other?—I do not think they have in the way you put it; simply because it comes from an opposite direction to a great extent.

183. Nevertheless, you think that when an explosion occurs through the illegal act of a man, with the exception of that man's family, the owner should be responsible for the injury done, that is to say, for the injury to other men who suffer by it?—Yes.

Mr. *Bulwer.*

184. I understand you to say, in the first place, that, in your judgment, a master should be liable for all accidents caused by the negligence of the managers?—Yes.

185. But you go much further, I understand, and one of your reasons, if not your principal reason for that, is that the owner will thereby be induced to employ more competent men?—That is so.

186. Can you tell me if there is any practice amongst the owners of mines to take any money security from persons whom they employ for the due discharge of their duties?—No, I do not know of any.

187. You have mentioned a case, I think, in which at an inquest, you tell us, it was proved that the engineman was incompetent?—They recommended that he should be prosecuted for manslaughter.

188. But was their evidence given, as I understood you to say, that he was incompetent; that the men working in the mine thought he was incompetent?—I do not know whether the jury took that view in their verdict or not. I do not think they did.

189. Do you mean that he was merely grossly negligent, or that he was incompetent to discharge his duties?—The men thought he was incompetent. The manager had had some dispute with his competent engine-men, and got rid of them, and replaced them by this man that let these men down.

190. Are you aware that the law is that, if a master employs incompetent workmen and their fellow-workmen are injured by the incompetence of the workmen so employed, the master is liable?—Yes, but the difficulty is in proving that the man was incompetent. That goes, as far as I understand it, to the law of evidence.

191. Does that state of the law qualify your opinion as to what you think ought to be the liability of the master, that if he employs competent men he is liable?—I think so.

192. Would you also make him liable, supposing an accident occurred through an undiscovered defect in the machinery?—No.

193. You would except that case?—I would except that case.

Mr. *Hopwood.*

194. What is the name of the officer underground, who has to see that the workings are fit for the men?—He is sometimes called the deputy, and sometimes the fire tryer.

Mr. *Hopwood*—continued.

195. It is his business, I understand, to go into all the workings; how many are there usually to a mine, about two or three?—Sometimes two or three, and sometimes, if it is a large mine, they have, in given districts, three or four.

196. And sometimes in the course of his duty it may occupy him three or four hours to go round?—Yes.

197. And before he comes back again to a place which he has passed; there may be a collection of gas in it?—Yes.

198. And you put that down among the risks of the collieries for which you think the owners ought to be liable?—Yes.

199. With regard to the men, I suppose each man is working mostly by himself, is he not?—It just depends what sort of work it is; if it is in pillar and stall, in short places there would be one man to a tub; but if it is on the long wall system, there may be three or four, or sometimes five or six all in one length.

200. But in the majority of instances is the man isolated and by himself?—I cannot say for the whole of the country, but it just depends whether it is long wall or in short places.

201. But which is most frequent?—The long wall has only been introduced lately; they take the long wall system when they can do so, on account of the roof; it depends on the roof.

202. I did not understand you to complain that the masters have not subscribed to your association; it was said in answer to the honourable Member who asked you whether they have not as a fact done so?—No, we do not complain about their not subscribing.

203. With regard to searching the men before they go down, to see if they have matches upon them, is that ever done?—I do not know whether that is carried out or not, but I think it should be in the cases I have referred to, either before they go down, or when they get to what are called the lamp cabins, where they deliver the lamps out. In some collieries they give them the lamps on the surface, and in others they give them the lamp down at the bottom.

204. Is that considered the point of departure from which the man starts for his work?—In some collieries, but in others they have what they call a district and a signal board which they cannot go beyond without leave.

Mr. *Ripley.*

205. I think you stated that you are secretary to the West Yorkshire Miners' Association?—Yes.

206. Not the South Yorkshire?—No.

207. Did I understand you to say that the West Yorkshire Association consists of some 60,000 members?—No, I said that there were about 60,000 miners and those employed about mines in Yorkshire.

208. Could you tell us how many miners there are in your association?—Somewhere near 8,000.

209. And how many in South Yorkshire?—About 9,000 now.

210. And you stated that 29,000 *l.* had been expended in giving assistance in cases of accident, and death, and so on; does that apply to the West Yorkshire Miners' Association?—To the West Yorkshire and South Yorkshire. I may say that South Yorkshire, two years since had

Mr. *Ripley*– continued.

had about 24,000 men combined, and so had we about 12,000.

211. In fact, you have both of you lost a great number of men during the interval of the last two years?—Yes.

212. And also the money you are collecting annually now, is not at all in proportion to what it was in 1875?—It is in proportion, but not in amount.

213. Relatively to the numbers, the subscription is annually the same, but there is a greatly decreased amount?—In West Yorkshire this last year our income has been 24,000 *l.* in the year ending December 1876.

214. How does that accord with your statement that from 1871 to 1876, 29,000 *l.* was expended in South Yorkshire and West Yorkshire, together with an immensely larger number of miners?—That is not what I say; I say our income for the year 1876 was 24,000 *l.*, not the expenditure.

215. What would be the income of West Yorkshire in the previous years back, as far as 1871?—We have had, I think, 30,000 *l.*, or somewhere over 30,000 *l.*, in one year as the highest amount.

216. Have you a large accumulation of funds at the present moment?—We have about 14,000 *l.* now.

217. And I presume I am correct in drawing the inference that a large amount of this money which has been subscribed has been spent really not in giving compensation for accidents or injuries, but for your own trade union purposes?—Yes, we have paid for trade purposes.

218. A much larger amount, in point of fact, for that?—No, not any larger.

219. Then how do you account for this fact, that between 1871 and 1876, only 29,000 *l.* was paid for accidents of various kinds, both for West Yorkshire and South Yorkshire, and you tell us that in one year the West Yorkshire Association alone has received 30,000 *l.* from its members, and received 24,000 *l.* last year; taking those two sums, will you show us whether you have not spent a very much larger sum of the money subscribed by your members for union purposes, I will not say whether legitimate or otherwise for the moment?—I will show you where our largest payments are; they are in sickness and natural death widows, and children.

220. You stated the whole of that to have been 29,000 *l.*?—No, I do not in that include the natural death, widows, and sickness of children at all. The natural death widows, and the children, are entirely apart from the accident widows.

221. You do not know what the other amount is?—No; I went over to Barnsley to get to know their item, and I knew the other.

222. With reference to this white gas, can you give the Committee a case of any sudden overflow of this white gas in any mine where you have been after the deputy has visited the mine and found it all safe, in the course of an hour or two, say?—I cannot give you more than I have given.

223. Have you, yourself, expeienced the fact?—What I said to the Chairman was that I was working in the place myself where that happened.

224. You made no complaint, I suppose, to

Mr. *Ripley*—continued.

the deputy of the fact?—There was no necessity to complain to the deputy, because he knew all about it, that it did rise and fall in the working place.

225. You stated that you not only would make an owner responsible for the act of his manager and deputy, but for the act of an actual miner, who from his own carelessness caused injury to his fellow-workmen working alongside of him?—That is so.

226. Take the case of a miner employing his own hurrier, or boy, for whom the owner or the manager is not in any way responsible; it is the case in the iron mining districts of West Yorkshire, where the collier employs his own hurrier, or boy, and pays him his own rate of wages; would you say that in the case of the boy, or the hurrier, having an accident in consequence of the carelessness of the man who employed him in the mine the owner of the mine should be responsible?—Yes.

Mr. *Eustace Smith.*

227. With regard to the 29,000 *l.* which you have mentioned, that was entirely spent in compensation for accidents?—That is so.

228. It did not include any compensation for sickness, or any allowance to widows of men who had died from natural causes?—No; it did not include any of those items.

229. I suppose that is a very large amount in your expenditure, is it not?—Yes, but there has been a larger number of men killed, you know.

230. But the payments for sickness and payments for natural death widows amount to a larger sum per annum, do they not?—Yes.

231. Do you suppose that it amounts to as much as the accident compensation?—Yes; more.

232. The sickness and natural death compensation is greater, you think, than the accident compensation?—Yes.

233. Therefore, those two put together, even if we suppose that they are the same in amount, would leave a very much smaller amount, which would be applicable to trade purposes, and the Honourable Member for Bradford seemed to imagine you would have at least two sums of something like 29,000 *l.* expended on sickness and on accidents?—Yes; I think more than that.

Mr. *Macdonald.*

234. You have been asked something regarding the way that men expend their money; is it their own?—Yes.

235. Have they not a perfect right to expend it as they think fit?—I suppose so; we think so.

236. You were asked a question on the instance you gave respecting the gas. If there had been a sufficient ventilation in the spot referred to, would the gas have accumulated there?—The first reason why we had to use lamps in the place that I mentioned was, because what we call the top end of the place, the far end of the place, was blocked up; there was no regular air-course through.

237. No ventilation?—Not in the first instance; and after gas was once found, the managers said we should have to go on using the lamps, as it continued to give off gas, as I have indicated.

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Mr. *Macdonald*—continued.

238. Had the ventilation been perfect or sufficient, would it have accumulated there in the manner you have indicated?—If there had been more air going through the working place it would not have accumulated in the way I have indicated.

239. Then you have been asked also in regard to the liberation of gas in large quantities; have you, in your experience, ever seen such quantities of gas thrown off as suddenly to lead to dangerous disasters?—No.

240. I am asking the question; have you ever seen that?—No, I have never seen anything of the kind in that sense.

241. Is it in your experience, as a practical workman, that such things occur frequently?—No, not in my experience.

242. You have been asked if the miners exercise care over their fellow men to see that they keep the law, that they protect each other. Have the miners any power under the Mines Act, or the special rules, to interfere with their fellow men?—Not that I am aware of.

243. If such did exist under the special rules, or under the Mines Act, would you not be aware of it?—I think so.

244. Has the workman any power to leave his place, and examine his fellow workmen as to matches, or as to lights, raising or lowering?—No.

245. Has not the workman the law specifically laid down that if he leaves his place he is under a penalty of 40 *s.*, or two months' imprisonment?—That is so.

246. For any purpose whatsoever?—Yes, that is so.

247. So that the workman cannot exercise any supervision over his fellow workmen, can he?—He has no authority to do so.

248. No power whatsoever?—No.

249. Would he not be exceeding his duty if he left his place to supervise or examine his fellow workmen?—Yes.

250. You were asked if the workmen complained to the owner regarding the manager; have they any right to do so as workmen, that you are aware of?—I do not think they have.

251. What would be the answer if they complained to the owner about the manager, as a rule?—"Mind your own business."

252. And would not that be a very proper answer?—I should think it would; I have a notion myself the managers have a little dignity; they like to feel that they are doing their own business.

253. If you persisted, as an individual workman, in making such complaints, what would be the result, in your experience?—Not in my own particular experience, but from what I know of others, it would be a note to leave.

254. Would it be regarded as a proper interference with the management of the mine?—Not by the manager.

255. Do you think it would be regarded as a proper interference by the workmen of the mine?—I should say that if a workman told the manager certain things, the manager would think that he was interfering with his business, and that it was improper for him to do so.

256. You were asked again if you tried to bring employers before courts for a violation of the law; have you any power to do so?—No.

257. Does not the Mines Act of 1872 specifically provide that that power rests entirely with the Secretary of State, or the inspector of the district?—Principally with the Home Secretary.

Mr. *Macdonald*—continued.

258. Is the workman recognised as a prosecuting party, or having power to prosecute at all?—No.

259. You were asked, in regard to safety, if the workmen gave information when their fellow workmen broke the rules. As a workman, as one employed in the mines, as you say, 16 years, had you seen when so employed, a fellow workman do anything which would be calculated to endanger his own life, calculated to endanger the life of his neighbour, and calculated to endanger your life, would you not have remonstrated with him?—Yes; I have done it several times. When I have seen a man that I thought was going to do something that would endanger me or himself, I have pointed it out to him, and I have had the good sense to use that extra authority; I have interfered and stopped him.

260. Would you not further have exercised the power which the special rules afford you, by complaining at once to the deputy or the manager of the mine?—Very likely, but it has never come within my knowledge to have to attempt anything of the kind.

261. You have never found, in your experience, men so reckless as to require you to go to the manager of the mine?—Never found anyone in my experience such that I have had to go in that direction.

262. Then this implied recklessness is not within your experience as a workman?—That is so.

263. Do you think that the workmen generally, so far as you know them, would tolerate any man's doing that which would endanger their lives, or his own life, if they saw it, without remonstrating, or without communicating directly with the manager, or the deputy, or overlooker of the men?—I believe if a practical miner were to see another man doing something which he considered reckless, and which would bring about an accident, he would report it as soon as he saw one of the deputies coming through the working place.

264. You have been asked a question in respect to the mine fouling; that is after you had entered the mine, that the mine fouled, the gas increased so that danger arose; do you think it the duty of the owner, as laid down by the Act, to have a sufficient staff of persons continually travelling through the mine to see that no such occurrence should take place?—I think it ought to be so.

265. And if such occurred, what do you think the duty of the employer to be; to have ventilation sufficient poured into the mine to get rid of that?—That is so; I think the ventilation ought to be sufficient to dilute the noxious gases and make it so that the men could work safely in it.

266. Suppose that under ordinary circumstances only 100,000 cubic feet of pure air was needed per minute, ought there not to be for any extraordinary circumstances 150,000 cubic feet always ready?—I think the ventilating apparatus should be so that they could increase as required.

267. If the law as laid down was fairly carried out, do you believe that these explosions and accidents so fertile in the mining districts would

Mr. *Macdonald*—continued.

would occur?—I believe that if the present Mines' Act was carried out to its full extent there would not be near so many accidents as now occur.

268. By accidents, you mean deaths?—Deaths.

269. And you believe that a vast number of those deaths are to be attributed to what?—To carelessness and mismanagement.

270. Carelessness and mismanagement, on whose part?—The parties appointed either by the owner himself, or those that he appoints to do the work for him.

Mr. *Tennant.*

271. You go much further than the last witness in extending the liability of the master; you say that he should be liable in all cases except where the accident is directly attributable to the person injured?—Practically I do not think I do. I believe that if his idea is carried out, however remote the laxity may have been, it will just bring about the same end as if the owner was held responsible in the way that I have indicated.

272. Supposing that two men are working together hewing coal, and one strikes the other on the leg with his pickaxe, would you say that the master should be responsible to the person injured?—If it was a deliberate act I would not have the owner responsible.

273. If it was a wilful and deliberate act?—If it was a wilful and deliberate act I would not have the owner responsible. But, on the other hand, if the manager puts two men into a working-place, where only one ought to be, and there is not room (which I have seen myself), a place where two men could not swing their picks, my opinion is that under circumstances like that, the manager, in the first instance, would be responsible for placing two men in a position where he knew accidents might occur, unless they were very careful indeed, much more careful than ordinary; the owner ought to be responsible.

274. Take the case that there is plenty of room for the men to work; would you in that case make the master responsible for damage caused by one to the other?—Not deliberately done.

275. If it was carelessness?—I should almost bring the matter under one head. Where two men were working, and they had plenty of room to work, and that occurred, I should think they were both deliberate.

276. Supposing there were five or six men working in one place in a pit, and the master had contracted with one who was a ganger, and that he himself contracted with all the others, and an accident happened, then would you say that the master was responsible?—I should say that the master in that case engaged the contractor to do his work, and delegated his power to the contractor, and I should hold the owner responsible in a case like that.

277. If the contractor himself, who contracts to get coal at so much a ton, engages four or five others to assist him, to join him in fact in the contract, and an accident happens to the man, say who employs these very people whom he has himself selected, and the accident happens through the negligence of one of those people, do you say that the master should be responsible for the acts of those persons?—Just as he would be in the case

Mr. *Tennant*—continued.

of a deputy, or fire tryer, or manager, or consulting engineer.

278. In that case the miner has no selection; the miner does not appoint the deputy, and has no power in the selection. I am assuming the case of a workman selected by another workman, and they are in a common employment together, and an accident happens; would you then make the master responsible?—Yes, because I think it is one way of trying to elude even the present Act. The same thing occurred down at this colliery at Dark Lane, near Mirfield. That was under a contractor. A contractor had the work, but still at the same time the manager superintended, and, as I suppose in all contracts, the manager has direct control over the whole of the men, whether they are sub-contracted or not. I believe every manager of a mine has direct control; not to this extent. The manager cannot go and say to the men, "Well, you must get so many yards per day, or fill so many corves per day;" but he has control over their actions, so far as they infringe or carry out the rules of the colliery.

279. The Member for Bradford asked you whether, in the case of a hurrier, and an accident happening, the man who engaged the hurrier would be responsible, and you said he would. But take the converse: supposing an accident happened to the man who did employ a hurrier, through the neglect of the boy himself; would you then say that the master should be liable?—I say that the contractor is employed by somebody else; somebody must employ the contractor; and if the manager employs an incompetent contractor, then I think he comes under the same conditions.

280. We will assume that. Supposing that this contractor employed a hurrier himself, and an accident happens to him through the neglect of that hurrier whom he himself has employed, would you then say that the master is to be answerable?—Clearly so, because I think this; that the manager of a mine ought to know all the men he employs, and all the boys too, and the manager should know all the ins and outs of the collieries every day, and if he does not find out for himself that there are parties in the mine who should not be there, then the manager is neglecting to do his duty, not carrying out, in my opinion, the Mines Regulation Act, and thereby increasing the danger of the colliery.

281. Then, would you put any limit at all to the liability of the master?—I would not say what the liability should be; I would leave that with the jury.

282. You would not limit the liability at all, and if an accident, an explosion took place, and say 300 or 400 people were damaged or killed, and it happened through a wilful act on the part of any one in the mine, you would say, would you, that the master ought to pay for all that?—I think so, because wherever by a wilful act one man can destroy the lives of 300 or 400 people, I think the mine itself ought to be closed previous to that time, or made so that men can work in it with comparative safety.

283. Assume that he had a safety lamp and opened it contrary to the regulations of the mine and an explosion occurred, would you say that the master should be responsible then?—That does not lessen the injury, whether the man wilfully opens the lamp or not, because if the

place

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place were free from gas, whether he took his lamp-top off or not, there would not be an accident, and thereby no death would be resulting.

284. Do you mean us to understand that it would be safe to work with a naked light in all cases where it is safe to work with a safety lamp?—I do not say that, but if I understand, the safety lamp was never intended to be brought into the mines to work with, but simply to test the working places, whether they were safe or not, and when the places were thought to be unsafe, that the men should not work there till they were made safe.

285. Then, in point of fact, safety lamps are not made to work with at all?—I have always understood so; only in exceptional cases where they might want a drift putting through, or a place where they could not get air, as they would like to have it.

286. You say you have stopped workmen whom you have seen beginning to do some dangerous act?—Yes.

287. Supposing you remonstrated with a man, and he would not stop but persisted on doing it, notwithstanding your remonstrance, and any man's remonstrance, would you say the master was responsible?—I think it would have been my duty to have come out of the working place and told the deputy and left the place if the man were doing what would make me liable to injury.

288. But supposing that before you could get away an accident happened through his persisting in doing something which you yourself knew to be dangerous, and which he himself knew he had no right to do, would you then say that the master should be responsible?—Yes, I do say so.

289. Then would you make the man himself responsible?—I should make the owner responsible.

290. But take the case of this particular man who insisted upon doing something which you told him was dangerous, would you make him responsible?—I should leave it with the employer. The manager employs certain men, and I do not know that they ever inquire about their qualifications; in fact if they did so there are many men they would not employ at all. If you go to Swaithemain you will find all sorts of men from every nation working in it; and if you go to a colliery we have working now (I do not want to name it), there are negroes and Hungarians, and all sorts of men, working in the mine who, in my opinion, do not know anything about gas, or anything connected with it; yet, at the same time, the manager employs them; and if the deputy were to say, "You go so and so," I have no doubt the man would go straight away, and he might, in the course of his going, go into a place that was unguarded; and in looking over the records I find that that is the case, that men go into places where they have no right to go, but they think it is right, and go on there, thinking it the proper way to go.

291. You misunderstand my question; would you make that man himself liable at all who causes the accident?—The man who causes the accident I would make liable in a certain degree.

292. To what degree?—Not as regards compensation.

293. You think he ought to get off scot free?—They seldon do.

Mr. *Tennant*—continued.

294. No, but I want to know what your opinion is about that; would you make the man liable at all for the consequences of his own act?—I think the present law says what it will do for wilful neglect or wilful injury.

295. Will you say what your opinion is as to the future, whether you wish to make that man responsible at all who causes death?—I do not think I would alter the law in regard to criminal neglect.

296. I mean not criminally, but civilly, would you make him responsible?—Not in the sense that we would hold the owners responsible.

Mr. *Knowles.*

297. I understood you, in answer to the honourable Member for West Yorkshire, to say that at some collieries the men did avail themselves of the 30th general rule under the Mines Act to examine the mine, or to depute two of their own body to examine the mine and report?—That is so.

298. Then you followed that by saying that they had not always the moral courage to report the danger when it existed?—I believe the system they carry out is this, that when the two men go round, the deputies or manager will go along with them, and go round the workings with them.

299. You said that the men felt rather timid as to the consequences if they did report?—I believe they are now, more than at the commencement.

300. And then you went on to say you did not advise them to report?—Not to report publicly. They have reported and have signed the report, and placed it in the local newspapers, saying that a certain mine was this, that, and the other; and then perhaps in the course of a week or two, we find that an accident has occurred; and I advised them not to do that any more, but simply to report what they find in the books of the colliery allowed them.

301. That being the case, do not you think it would have been very well to advise the men to report it publicly, if a mine had been in a dangerous state, so that all the miners might know it?—Some of our miners are migratory, and do not care where they work, while others are located; and as a rule, the better class of miners are out in the country where they are located, and stay there generation after generation; and you will find that men do not like to have the idea of having to leave their place for reporting strongly.

302. Do you suppose it is good advice that you give these men who have examined the mine, not to report it and make it public, when they are specially delegated for that purpose by their own body to examine it; is it good advice that they should not report it publicly, if it is in a dangerous state?—I do not think that the Act ever contemplated that the workmen should report how they found a colliery.

303. But I understood you to say that they had reported it publicly when they found it unsafe?—Yes; but I advised then not to report any more, and I should give the same advice still.

304. You do not think it desirable that the colliers of the whole district should see in the public newspapers when they have an opportunity through their own body of seeing it, that any

Mr. *Knowles*—continued.

any particular colliery is in an unsafe state?—I advised that, instead of their reporting it, the mines inspectors should go and make a report, and publicly report the same, so that the onus of the responsibility should rest with them, and not with our workmen. We do not profess to be able to know all the ramifications of a colliery, and say how it really ought to be.

305. As regards any man who has been guilty of neglect in the mine, if it comes before the union or your society, you say that the men sometimes get censured for it; that there is some rule or provision made that they should be censured for any negligent act?—If as a rule we find that men are doing something they should not do they get pointed out what they ought to do, told what the general and special rules direct, and the Act, too.

306. Did you ever know an instance of a man being expelled from the union in consequence of any neglect that he may have been guilty of in the mine?—I have not one in my mind now, but I think I can remember men who have done contrary to what they should have done, and because we would not sue for the man, he has left our society. I am referring to a case where a man has gone and done something he should not have done. I have one in my own mind now. A man goes to his work, and there is no

Mr. *Knowles*—continued.

deputy there to order him to go into his working place; he goes into the working place and gets burnt, and then he wants us to sue for compensation for the injury received, he being down a good many weeks; I told the man myself personally that I did not think we had any plea or right whatever to sue for compensation in that case.

307. But you would not expel a man from the union in consequence of doing a negligent act?—It would not do us any good or him either. We think we have done our duty if we refuse to acknowledge his claims.

308. You do not think it is the duty of the unions to try to make the men careful and expel them if they commit any negligent act which would endanger the lives of their fellow workmen?—We find in all cases of that kind, that if we refuse support they leave without being expelled.

309. Do you ever refuse support to a man who has committed a negligent act, providing he is not hurt. I can understand that if he is injured and you refuse to pay him, he would leave the union; but have you any means by which you expel a man from the union if he commits any negligent act, and so sacrifices the lives of any of his fellow workmen?—We have no rule to that effect.

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Mr. Henry Cook, called in; and Examined.

Chairman.

310. What is your occupation?—I am at present employed as the Secretary for the Fife and Clackmannan miners.

311. Have you any complaint to make as to the state of the law with regard to accidents to miners?—Yes.

312. What is your complaint?—My objection to the law, as at present applied, is that where a person killed or injured is in common employment with the person whose negligence is the cause of such injury, he has no right to compensation; and I think that this fact of being in common employment with the person who causes the injury, should have no effect in the case at all. I may say that only last Saturday there was a man killed in one of our collieries. They are sent in by relays to do what is called brushing.

313. What colliery are you speaking of?—Cowden Beath Colliery, six miles from Dunfermline. This squad of men went in to do brushing where there had been another squad at the same work before they came and had left, and the props that had been put in to support the roof had not been properly set; they had not reached to the pavement, although they seemed to the eye to be all correct; and when this man, in order to extend the wall, began removing with a shovel the stuff away from the foot of these props, which should have been upon the solid rock, the props gave way, and the roof came down and killed him. Now in the present state of the law, I believe that his wife and children will have no claim for compensation, on the ground that this negligent act was done by some person in common employment.

314. Who was the person whose negligence caused that; what employment was he in?—That squad were brushing as well.

315. He was not a person in authority, as I

Chairman—continued.

gather?—It might be that one in authority was along with that shift; but I cannot speak as to that; but there was one who is called an inspector, and is referred to in the special rules as a competent person who is to examine the working places, and I understand he was present, or within a few yards of the place, when the accident occurred.

316. What law would you like to have in reference to accidents in collieries; if you could make the law, what would it be?—If I was to make the law I would make it in this way; that if an act of negligence led to loss of life or injury, it should make no difference in the eye of the law if the party injured was in common employment with the party who committed this negligent act.

317. Then supposing that one man by his negligence caused the death of another man, who should you say was to be responsible for that; who is to compensate; what is your view on that?—I should think the coalowner should compensate.

318. Although the man was not in authority?—Yes, although the man was not in authority.

Mr. *Tennant.*

319. Would you make any difference then in the liability in the case, whether the employer had engaged competent or incompetent deputies or workmen?—No.

320. However much care the master had exercised in the selection of men, or however negligent he had been, you would make no difference?—No, I would make no difference; they must discharge the duty competently they are appointed for.

321. And you would make the master responsible even for a wilful or reckless act on the

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Mr. *Tennant*—continued.

part of a fellow servant?—Any answer to that question would require to be qualified in some way. If one fellow workman was wilfully to lift a tool or anything of that description and strike his fellow-workman, I should not think that the employer could be held responsible for that.

322. But if instead of lifting a tool or something like that, he lit his pipe and caused the accident?—If he lit his pipe in a gassy mine then I should hold the employer responsible for the result.

323. Though it was totally contrary to the rules?—Yes.

324. And would you go so far as to say that that liability should extend, even if the person injured did not even remonstrate with his fellow workman against doing that act when he saw him begin to do it?—If he saw him begin to do it, I should say he would remonstrate with him at once.

325. Supposing he did not?—If he saw him committing an act of that description in that dangerous place, and did not remonstrate with him, I would consider that he was also contributing to his own injury; but the others who suffered through that accident, who had no opportunity of interfering to prevent this act being done, would still, in my opinion, be entitled to compensation from the employer.

326. And would you extend that law to all trades as well as coal-mining?—I am not prepared to say how far it would be advisable to do so.

327. You only speak as to its being advisable in the coal mining?—Yes, chiefly.

Mr. *Macdonald.*

328. You heard the question put to the last witness if the workmen expel their fellow members from their association because they break the law; have you ever heard of a mine owner who has been convicted for breaking the law being expelled from the mine-owners' union?—No.

329. Did you ever read of it?—No.

330. Do you think it is customary?—No.

331. Are you aware that quite a number of mine owners, probably 100 of them every year, are convicted for breaking the law, and a great deal more, sometimes?—Yes.

332. Have you ever heard of many of them being expelled by the mine owners' association for so breaking the law?—No.

333. Have you heard of any of them being in office in the mine owners' association who have so broken the law?—It does not occur to me at the moment, their officers being in that position.

Mr. *Shaw Lefevre.*

334. Are the Scotch miners aware that the law of Scotland was at one time more favourable to them than the English law?—Perfectly.

335. Do you recollect when the change of the law was made by the decision of the English House of Lords?—Yes; the first time it seriously affected us was in 1867.

336. Before that do you recollect cases of men obtaining compensation from their masters?—We had cases.

337. Do you recollect what the particular cases were in which they did obtain compensation?—I can tell you of one that occurred before that time; it was Suttie against the Lochgelly Iron Company. A man was killed in the mine while endeavouring to support a broken roof, and the appliances had not been so very complete, and the stone came down and killed him. I cannot go into the particulars now; it is a long time ago.

338. It was owing to the roof not being properly supported, was it not?—Yes, I think so, and the widow sued the Lochgelly Iron Company, and got compensation, either 800 *l.* or 1,000 *l.*

339. Can you say whether there were many cases of that kind in those days when the labourers obtained compensation from the owners?—There was not a great deal. Of course it goes back rather beyond my clear recollection, and I have never read it up.

340. But the Scotch miners are perfectly aware that at one time the law was much more favourable to them?—Yes, they know it quite well until that decision in the case of Murray and Cunninghame; that case was decided in the House of Lords; I believe it was so; and since that time the miners do not offer to bring cases into court, knowing that they will be decided against them.

341. They are of opinion that a safeguard is removed from them by that decision of the House of Lords?—Certainly; they are of that opinion.

342. And that in consequence there is not so much inducement to the miners' agents to be careful?—No.

Sir *Henry Jackson.*

343. I understand, then, that your only objection to the existing law is so far as the fact of common employment is available as a defence?—Yes.

344. That is to say, you would leave the masters all other immunities as long as you deprived them of the right of pleading that the injury was caused by some other person in the same employment?—Yes; with that difference, I would leave the law as it stands.

345. In other words, you would not make a master responsible for mere accident?—No, when it could be shown to be mere accident.

346. Do you think that where an injury is caused by the negligence or carelessness of a fellow-workman there should be any liability against that man who caused the injury, although he is a workman?—Is your question this, should the man who caused the injury be liable to compensate the one injured.

347. Or the master, in case the master has to pay for his default?—The master should compensate the one injured.

348. But suppose the injured man recovers against the master, and it is shown on the trial that the injury was actually occasioned by a fellow-servant in defiance of the master's orders, would you not let the master have a right over against that workman who disobeyed his orders, and thereby caused the injury; or would you exempt him under all circumstances?—I would allow the employer to deal with him, if it was contrary to his orders.

349. But would you not make him liable to the employer?—I would allow his employer to have the right to prosecute him for the violation of

Sir *Henry Jackson*—continued.

of his orders, which had led to the injury of another man.

350. Or to make him pay, if he could?—Yes, if he could I would have no objection to the employer making him pay.

351. Why should not the injured workman make him pay as well as the employer?—Because, as a rule, he could not pay.

352. There is no other reason, is there, for that. Do not you think that in the first instance, the man who does the injury ought to pay for it?—If there is any profit in carrying on the colliery at all, the individual may have no share in this profit; whereas the employer, having all the profit, may be expected to be able to pay him.

353. Do you put it only on the ground that the employer is richer than the workman?—Not entirely on that ground; that appears to me to be the best place to put it.

354. Because his pockets are deeper?—That may have something to do with it.

355. It has a good deal to do with it; that is about the bottom of it, is it not?—If there is going to be compensation got, that is the most likely place to get it; and seeing that the profits all go there, I think it only stands to reason that compensation should come out of the same place.

356. Supposing the master shows that he is working the colliery at a loss, would you exempt him then?—No; he should stop his colliery if he were making a loss.

357. You said that something turned on the question whether the working men had the oportunity of preventing the misdoing that lead to the accident?—Yes; workmen have very seldom the opportunity of interfering to prevent.

358. But sometimes they have?—They may.

359. And sometimes a good deal better opportunity than their masters, or the overlooker, have they not?—No, unless there happen to be two men working together.

360. But still there very often are two men working together, I take it, are there not?—Occasionally.

361. Take the case you mentioned just now of an insufficiently propped roof; the master never props a roof, nor the overlooker, but the roofs are always propped by a workman?—The roof was propped in that case by the brushers.

362. What are brushers?—They are men who brush down the superincumbent strata to make the roadway sufficiently high.

363. And it is their business to prop up the roadway?—Yes, where it is loose above that.

364. And to make the roof good?—Yes.

365. Did this accident happen in the roadway?—In the roadway.

366. Do not you think that the workmen who passed up and down that roadway had an opportunity of seeing whether the roof was properly secured.

367. I do not want to get into that particular case, but as a general rule, they would have, would they not?—The same thing would hold in other cases; it might happen to be all right above, but the deficiency might be under ground.

368. But there must be a great many cases where the men engaged in a mine must be able to see whether there is neglect or carelessness, must there not?—In cases where two men are working together, the one man may see that the other is careless, but it cannot extend much further.

Sir *Henry Jackson*—continued.

369. Let us deal with one case. Then you say there may be a case where one working man, one collier, may see and be able to prevent the carelessness of another?—Yes.

370. Now, do you think that where a man, seeing his fellow-workman is negligent or careless, does not prevent it, he should make the master pay, although he might have prevented it and did not?—I believe whenever one working man sees another attempt to do a reckless or careless act that is likely to lead to injury, he does endeavour to prevent it; but then there are so few opportunities of having a surveillance over those concerned, one over the other, that it can only occur very seldom and to a very small extent.

371. I am very glad to hear that; but would you in those cases where it was shown that the workman might have prevented the carelessness of a fellow-workman, make the master liable?—Yes.

372. Just the same?—Yes.

373. Then that would let in another defence, contributory negligence, would it not?—Yes.

374. Do you think that ought not to be a defence either?—I am not sure that I understood you. If through the act of this individual, who had not been interfered with, a third party was injured, I would hold the employer responsible for the injury.

375. Although the party injured might have prevented it?—No, although a third person present might have prevented it, but did not do that.

376. Now, suppose the person injured might himself have prevented it, would you hold the master liable?—It would depend a good deal upon the degree, because if the person who was injured actually did contribute towards that injury, and could have prevented the whole thing taking place, I scarcely think it would be right to hold the master liable.

Mr. *Ripley*.

377. You stated that you were the secretary of the Life and Clackmannan Miners' Association?—Yes.

378. Would you inform the Committee of the number of members there are in the association?—About 4,000.

379. Is that an increasing or a decreasing number, as compared with past years?—It is slightly decreasing since the dull trade commenced.

380. What has it decreased?—About 1,000.

381. Within what time?—Within two years, or two years and a-half.

382. Would you tell us about the entire number of miners employed in the same area comprised within the mining association which you represent?—I could not tell to an individual, but I should say that it was about 5,000.

383. What is the present income of your association; last year's income, for instance?—I have not taken any account of a year's income. The contributions to it have been 1 *s.* a month for that trade fund, and it runs to about 180 *l.* a month.

384. The entire income?—The entire income.

385. Is any portion of that income expended for the purpose of giving assistance in the case of accidents, or in the case of deaths, to widows and families of the men?—No, not since the 11th of November

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Mr. *Ripley*—continued.

November last; but for the two years previous to that we spent over 6,000 *l.* in that way, but there was a portion of that spent for sickness too, but it was another fund, a separate fund altogether.

386. Have you a large accumulated fund at present?—About 14,500 *l.*

387. Do you say that since November last you have ceased to use this money in any way for the purpose of giving relief in cases of accidents?—It was not this fund that was used previous to that for this purpose, but another fund, a general fund that was collected additional to that. Since that time it has been divided into the collieries, and gone in the shape of local societies, local efforts.

388. Then, with regard to the 180 *l.* a month, or whatever the amount may be which you are at present collecting, is any portion of that sum appropriated or used for the purpose of giving relief, either in the case of sickness, or in the case of accident or death to the parties who are members of the association?—At the death of every member of the association, whether through natural causes or through accident, an equal proportion of the funds in hand is paid back to the relatives; all the money that has not been used that has been contributed by the man that has died, is returned to his relatives; all the money that has not been spent.

389. Not been spent for what purpose?—For various purposes; sometimes a donation given in a charitable way, and sometimes it is required for trade purposes; but whatever is not spent, the rule is to pay back that sum to the relatives.

390. There is no fixed principle at all which regulates the amount which should be given in case of his death?—Yes, that is the fixed principle.

391. But depending upon the amount which has already been spent; for instance, a man may have paid 20 *l.* during a certain number of years, and an application is made by his widow to have it refunded, and you may say "18 *l.* has been spent in our ordinary purposes, and there is 2 *l.* left"?—Those are the words of the law, that a proportionate share of the funds in hand at the time of the death of the member shall be paid to the relatives.

392. That may be a very small amount?—It might be small or it might be large.

Mr. *Hopwood.*

393. I understand your numbers diminish in bad times; men cannot pay up their contribution then I suppose?—It is not that, but they are starved out of the mines and go to something else occasionally.

394. With regard to the liability of a fellow-workmen to his fellow-workmen, is it not the law that if one fellow-workmen injure another fellow-workman through negligence, he is liable to him; if any person injure another he is liable to him, whether he is a fellow-servant or not?—Yes.

395. Then you say, in addition to that, you think the master ought to be liable?—For compensation.

396. You, perhaps, know that in our law, in many instances, two people are liable for the same injury to the man who has suffered it?—Yes.

Mr. *Bulwer.*

397. You, I understand, would like, in all cases, to have a defendant who can answer in damages?—Yes.

Mr. *Bulwer*—continued.

398. And (that I may fairly ascertain your views) what would you say to this: supposing my footman in the country wanted to go to the railway station, and asked my permission to let my coachman drive him in the dog-cart, and I consented, and the coachman negligently drove him and upset the dog-cart, and he had an injury, would you say that the footman ought to have a right of action against me, and I ought to be responsible for the negligence of my coachman?—Yes.

399. I want to understand another thing. Some question was put by the honourable Member for Stafford with reference to a rule in mines, that a man is liable to a penalty if he leaves his position where he is at work. Supposing a man was at work in a mine, and saw 10 or 20 yards off him a fellow-workman smoking his pipe, and he called out to him to put his pipe out, but he did not, would he be infringing any rules of the mine if he were to leave his place and remonstrate with him, or even go so far as to take the pipe out of his mouth?—There is certainly no provision in the law for him interfering in any way; still I believe that a man would naturally be inclined to interfere in a case of that kind.

400. Then what I understood the last witness gave as his reason for not interfering was that he would get a note to leave. Is that at all a probable occurrence to your mind?—Yes, very probable.

401. That if a man working in a mine saw another smoking his pipe, and he went to interfere with him, and if he did not put out his pipe, reported him, that man who so reported him would get a note to leave; is that what you say?—Generally speaking, a man who would go out of his way to interfere with his fellows in that way would not be long kept on a colliery, but would be turned off for being troublesome; but in our part of the country we are not so much troubled with this dangerous gas, and there is nothing in the shape of a law prohibiting a man from smoking.

402. I was merely giving that as an instance; but do you say that according to your experience of the working of mines, if a man anxious for the safety of the mine and for the safety of his fellow-workmen reasonably interferes to prevent injury, he is looked upon as a meddlesome, troublesome fellow to be got rid of?—Yes; in a number of cases he is.

403. By his fellow workmen?—No; by the employer. If there were more than one complaint made by him about this man, whether he is in charge or not, or this other man doing something he disapproved of, some of the managers in our district would get the man his discharge.

404. Without investigating whether his complaints were reasonable or not; simply discharge him for making them, do you mean?—In some places they would; it would depend upon the temper of the manager.

405. Do you really mean to say that managers get rid of men simply for making complaints, without investigating the reasonableness of their complaints?—Some of them do get rid of men that they believe troublesome.

406. I have no right to ask you to give me instances, but can you mention any one in particular that you now can call to your mind; I do not want you to mention the colliery or the person?—There are other reasons why it might not be

Mr. *Bulwer*—continued.

be very safe to mention it, because the reason that a man of this description is dismissed is never given to him himself; he is never told the reason. I am only saying that it is known, or assumed that it is, because this was done that he is dismissed.

407. And you assume that he is dismissed because he has made complaints against fellow-workmen?—Yes.

408. Do you agree that if the existing Mines Act were fully carried out and enforced, there would be less reason for the alteration of the law which you are now advocating?—Yes; I think there would be a great deal less.

409. Supposing the Mines Acts, as you understand them, were fully carried out, would there be any necessity for the alteration of the law as it now exists with regard to common employment, in your judgment?—There would still be a necessity for an alteration of the law, but a great deal less, because I assume there would be fewer accidents.

410. With regard to those cases to which the honourable Member for Reading referred (I think Suttie was the name of the plaintiff in one); were those cases decided in the Scotch Courts?—Yes; in the Court of Session.

Mr. *Knowles*.

411. As to the case that has just been referred to, do you know the particulars why the man's family got compensation from the owner?—No; I do not know; I cannot tell the particulars now, though I was working in the colliery at the time that the thing took place.

412. Was it because the owner did not supply

Mr. *Knowles*—continued.

the proper material to keep up the roof that fell down and killed the man?—I would not be prepared to say that that was the reason of it.

413. You are aware probably that the present Mines Act provides that proper and sufficient material shall be provided for that purpose, or else the master is now responsible?—Yes.

414. So that he might have been responsible in that case if it was in England, providing that the master had not provided the material to keep up the roof?—I do not see that he would be responsible.

415. What is it you term brushing?—Cutting down the superincumbent strata to make a high road.

416. Now supposing two men were working together, and one of them, through carelessness, or wilfully, or otherwise, knocked out a prop and it had the effect of injuring or killing his fellow workman, would you then hold the master responsible for the damages?—Yes.

417. Referring to the question of profits or loss; you said if the owner is losing money, let him stop it; have you considered the consequences of stopping a mine to the workmen, their families, and the neighbourhood generally?—Yes.

418. How they are to live in these cases?—I have considered that.

419. Still you would say stop it?—Yes.

Mr. *Macdonald*.

420. Have you ever heard of any employer carrying on the work for charity to the workmen?—Some tales of that sort have been told, but I do not think they have been believed anywhere.

Mr. *Cook*.

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Mr. JOHN BURNETT, called in; and Examined.

Chairman.

421. WHAT is your employment?—I am Secretary of the Amalgamated Society of Engineers.

422. You are aware that the Committee is to inquire into the state of the law between master and workmen; have you any suggestions to make on the subject?—We are a large trade and benefit society combined; we pay 100 *l.* benefit to members who are entirely disabled from their employment by accident or by any disease. Since 1851 we have paid 26,000 *l.* as benefit in cases of accident or disablement through disease. I should say that our average expenditure under this head per year is something like 1,350 *l.* About 25 per cent of the cases in which we pay accident benefit are cases in which the men have been disabled by accident, and in very many of those cases we find that the accidents have occurred through preventible causes, and are, therefore, cases in which some compensation ought to have been paid by the employer to the workman who was injured, or to the family of the workman in the event of his being killed; and it strikes me that perhaps the best course that I can take before the Committee is to specify the cases that have come under our notice (and we keep details of the whole of the cases that do come before us), and to illustrate exactly what I mean by those cases, showing to the Committee in which cases I consider that the workmen would be entitled to compensation from the employer, and in which

Chairman—continued.

cases I consider that they would not be so entitled.

423. Will you do so, if you please?—The first case is the case of a man named Alexander Hogg, who sustained a compound fracture of the right arm through being caught while putting on a belt. Now, I may say that that is one of the most frequent causes of accident that we have in our trade, and it is a cause of accident which is very easily preventible by proper workshop rules and regulations; and I might make the general statement that in nine cases out of ten where the man is maimed and disabled through accident in putting on a belt, the employer should be liable. As a rule, if a man's machine belt comes off, the only safe way of putting on the belt is by having the machinery almost stopped. You see the stoppage of the machinery of a large shop, even for a few minutes, entails the loss of a considerable amount of time over a great many machines; and employers do not like to see the machinery stopped, and foremen do not like to see it stopped; and therefore men are driven by the necessities of the shop, or of the employers, to endeavour to put their belts on while the machinery is in rapid motion. This is a very frequent cause of accident, and I have myself seen a boy whirled round for about two minutes on a shaft running at the rate of 60 revolutions per minute. I take this to be a preventible cause of accident; because employers, in cases where they

Mr. *Burnett*.

Mr. *Burnett.*

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they have machinery running at high rates of speed, have only to make it one of the rules that no workman in their employ shall attempt to put on a belt which has come off without having the motion of the machinery reduced to so many revolutions per minute; I consider that in cases where that is not done the employer ought to be liable for accidents of that description; but in cases where such a rule is one of the regulations of the establishment, then I should hold that the employer was not liable, because the workman had done something which he had no right to do in the place; therefore, in this case of Alexander Hogg, who had his arm disabled in that way, I should think the employer was clearly liable to pay that workman compensation; but under the existing state of the law the plea would be put in, that he had no right to attempt to put the belt on in that way, and that he did so at his own risk; and even if the foreman of the shop neglected to see that the belt was put on in a safe way, then the plea would be put in that the foreman was a fellow servant of the workman; and, therefore, on that ground the right to compensation would be lost. The next case is the case of a man named Robert Kegan; he was a member of the Dublin branch of our society. He had been erecting some shafting, and other machinery in a brewery; and on the day of putting it in motion, he, by the carelessness of the man in charge, had his right hand caught among the wheels, and frightfully injured. The word "carelessness" there is a word which it is, perhaps, not easy for the Committee to understand. New machinery was being tested; one man was at the engine or at the starting point, and this other workman was at some intermediate place; he had his hands busy amongst some toothed wheels, and the man at the starting point gave no information that he was going to start the engine. The man's hand was completely crushed, and rendered useless for life; and I think that the other man, being in charge of the engine, was liable in that case, and that the employer of the man was also liable to give the workman compensation for the injury which he in that case sustained.

424. Was it ever tried whether he was liable, or not?—It was never tried; and I may say that these cases never have been tried in recent years on account of the existing decisions under the law of compensation.

425. The law of common employment you mean?—The law of common employment.

426. With regard to that first case, do you think that the man who wilfully undertook to do this dangerous thing had a right to a remedy against his master if he hurt himself?—I think so.

427. Although without any accident or carelessness on anybody's part, he undertook to do this dangerous work?—I think so, for the reason I stated, that it ought to be the duty of an employer, knowing the danger of such practices, to prohibit their being carried on in his establishment; but in many cases the man is not a favourite who frequently has to stop or have the machinery slowed, and no man likes to resort to such a course if he thinks that in any way he can do without it. I have another case, that of George Wylie, a member of the Johnstone branch of our society. He lost his arm in exactly the same way as the man I have already referred to; he attempted to

Chairman—continued.

put a belt on while the machinery was in full motion. Here is the case of a member of the Bury branch of our society, John Unsworth; he lost his arm through the breakage of a chain and the fall of some machinery upon him. Now, I hold that the breakage of a chain is a preventible cause of accident. In most of the large engineering works of the country special men are kept for the slinging of heavy machinery, and the men who are placed in such positions ought to be competent to decide on the lifting capacity of all chains or ropes which they may have to use. There are mathematical rules laid down for the calculation of the strength of chains and ropes; and considering that very many human lives depend upon the chains being of the requisite strength, I think that those are things which ought to be kept under strict inspection in all workshops; and if a chain broke through a defective link, or not being generally of sufficient strength, then I would maintain that the employer was liable for the injury which might be caused to any of his workpeople by the breakage of such a chain. The next case is the case of a man named Thomas, a member of the Jarrow branch. He was employed in a large shop at Jarrow. Thomas was working on board ship; a crane near him was lowering a stern frame, and the man at the break was unable to hold it; the handle of the crane flew off with immense force, and striking the ground was dashed into three pieces, one of which struck Thomas between the shoulders; paralysis supervened, and the man was unable to work at his trade any more. Here was a case in which the break power of the crane was insufficient to hold the weight which the crane was set to lift. That is a case in which the cause of accident was also preventible, and in that case I should maintain that the employers were liable for the damage sustained by the man.

428. Do you go to the length of asserting that the employer is to warrant his machinery?—I would go to the extent of maintaining that an employer should be liable for the lifting capacity of every crane in his place.

429. And that the other machinery in the same way was competent to discharge its duty whatever it was?—Yes, I should hold that. I have here a case which also illustrates a very frequent cause of accident and disablement in our trade. Joseph F. Gunn, of the Enfield Lock Branch, sustained an injury to his left eye from it being struck by a chipping. A piece of steel or metal very often flies from the chisel and deprives a man of the sight of his eye. I would not hold the employer liable in that case, for the simple reason that it is a cause of accident entirely beyond the control either of the employer or of the workman. Here is a case in which a similar accident was inflicted upon the eye, not through the blow of the workman himself, but of his partner. It is the case of a smith and of a striker. Thomas Thompson, of the Leeds fifth branch, had his eye-sight injured by one of his eyes being struck by a piece of steel struck from the head of a chisel by the blow of a striker. Now that is a case in which the accident cannot be said in any way to be caused by the negligence of the striker, because pieces of steel will fly under the blow of a heavy hammer from the head of a chisel, and therefore that is a case in which I should hold that the employer is not liable. Here is a case somewhat similar to the last one, but

Chairman—continued.

but containing another element, which enables me to draw a distinction between the two cases. Jonathan Bullman, a smith, made application for the benefit, through the Carlisle Branch, upon the grounds of imperfect vision caused by an accident, the nature of which was that whilst Bullman was working at a steam hammer a pairing or chipping from the anvil of a fellow workman, who was close by the hammer, struck him in the right eye. Now this is a different case from the last one, in asmuch as the smith is compelled to go away from his own anvil and his own fire to the forge hammer. A light forge hammer is generally kept now in the majority of smiths' shops, and much of the heavy work of the shop is done under that hammer. That, then, is a case in which a man goes from his own anvil to the forge hammer, and while working at that he is struck by a chipping flying from the anvil of a fellow workman. In that case I should hold that the employer was liable, because the forge hammer being a place at which all the men of the shop have to work, as occasion may require, ought to be so far distant from the other smiths' fire, or fires, that such an accident would be almost impossible; or if near other smiths' fires, then it ought to be guarded in such a way that nothing can fly either from the fires or from the other anvils, so as to injure the workmen. Here is another case; the case of a sea-going engineer: while at sea he was busy oiling the engine, and, while stepping down from the condenser on to one end of the engine bed-plate, his foot slipped over the edge of the bed-plate, and between the bed-plate and the swing of the crank; the crank then coming round caught the leg, and tore the lower part of it all to pieces. Amputation was necessary, and the man was disabled for life. But it is customary, in marine engineering, to put on a small piece of angle iron on the corner of the bed-plate; to prevent such accidents. In this case there was no angle iron on the bed-plate; therefore there was a liability in that boat to accident to the engineer which did not exist in the majority of boats; and in that case I should hold that the employer was liable to pay the man compensation. But, even in that case, had it been tried (and I may say that advice was taken in reference to that), the usual loop-hole would have presented itself; because all owners of steamships, especially large owners, now employ managing engineers, and those managing engineers are held liable for keeping the engines in generally proper condition. The inspecting engineer of the steamboat, therefore, would have been held to be a fellow servant of the engineer who was injured; and, therefore, the doctrine of common employment would have been set up, and the man would have lost his case. I may say, while quoting illustrative cases, that I am also very familiar with a railway case, in which an accident happened under somewhat peculiar circumstances. There was to be an inspection of volunteers at a town called Hexham, about 20 miles from Newcastle. It was necessary that the inspecting officer should go up from Newcastle to Hexham for the purpose of inspecting the volunteers, but he missed the ordinary train; he was a few minutes late, and it had gone without him; but he at once applied to the stationmaster for a special engine. The stationmaster placed a special engine at his disposal, and it commenced to run with him up towards Hexham. Now,

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before the special engine started, the ordinary train had not arrived at the intermediate station to which the telegraphic communication of the company extended. In that case the stationmaster could have telegraphed to Blaydon, and instructed the stationmaster there to put a notice on to the last carriage of the ordinary train, "Another train following." In that case the officials of all the stations further up the line to which there was no telegraphic communication would have been warned. But nothing of that sort was done, and the stationmaster at Wylam station, hearing something like the noise of an approaching train of which he knew nothing, came out of the warehouse attached to the station, and looked along the line; he had scarcely done so when the locomotive came past with the inspecting officer on it, at the rate of 50 miles an hour, and he was struck down and killed instantly. That was a case in which many solicitors were consulted, and the relatives of the deceased man were advised not to take proceedings, because the usual plea would have been put up that the head stationmaster at Newcastle was the party who, by his negligence, caused the death of the country stationmaster, and therefore his family would have been debarred from receiving compensation.

430. Now can you generalise your observations; you have given us a number of special cases; what is the change of the law that you would suggest as arising from them?—What I would suggest is, not so much an actual change of the law itself, as a restoration of the law to the state in which it was found previous to the judicial decisions which set up the doctrine of common employment.

431. Would you explain exactly what you would wish to have done; would you in any case allow common employment to have any effect?—In no case whatever.

432. For instance, if you and I are carrying a heavy weight between us, and I am clumsy, and let it drop on your toes, do you think that my master ought to be liable for that?—That is an extreme case, and extreme cases of that description would, in the event of coming to trial, have to be left to a jury. Speaking for myself as an individual, I do not think that I would be justified in claiming compensation from my employer unless you had been sent by the employer or an agent of his, to carry a weight which you were unable to carry, and in that case I should hold the employer liable.

433. He would be liable, I take it, if you did away with the rule of common employment, would he not?—The negligence on the part of the man who let the piece of iron fall would have to be established.

434. I am assuming that it was by mere negligence that it dropped on your feet?—If it was by your negligence, then I should hold that the employer was liable.

435. You would simply wish to undo the cases of law which have set up this doctrine of common employment; that is your suggestion to the Committee?—Yes.

436. Have you any other suggestion you can make to them on the subject?—No, I have no further suggestion to make.

Mr. *Bulwer.*

437. I should like to test it by an illustration; did you hear me ask this question of the last

 witness;

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Mr. *Bulwer*—continued.

witness; a servant gets my permission to go to the railway station in my dog-cart driven by my coachman; my coachman is negligent, and he upsets the dog-cart, and does the other servant an injury; would you make me liable as the master, for the negligence of my coachman in that case?—I may say that I heard you ask the question of the previous witness, and an answer suggested itself to me at the time (perhaps an Irish sort of an answer). I would have been under the necessity of asking another question, and putting it this way; did the footman go in the dog-cart on your business or his own. If he went on your business, then I should say most decidedly you would be liable for an accident sustained by the negligence of your coachman; if he were going on a holiday, or on his own business, then the case would be entirely altered, and I would hold you not liable.

438. If my coachman is driving my carriage in the street, and runs over a stranger through his negligence, I am liable?—Yes.

439. But supposing the footman is in the habit of standing behind the carriage, and has done so for a long time, and the carriage happens to overturn, and he sustains an injury, would you say that he ought to have an action against me for the negligence of my coachman in driving?—Yes, in a case of that sort, I should think so.

440. Are you aware now that masters are liable for defective machinery?—Yes; I am aware that if you can clearly prove that the machinery was defective, and that it was allowed to remain in that defective state by any negligence of an agent of the employer, then there at once is the customary loophole.

441. Would you, therefore, say that you would make the master liable for an undiscoverable flaw in the machinery, assuming that he had taken every proper means to test it?—Everything in such a case turns upon the definition of the word "undiscoverable."

442. An undiscoverable flaw in an axle-tree of a railway engine; such a case as that has been before the courts, whether they could not make out by any test whether the axle-tree was sound or not, and every effort had been made by the railway company to ascertain its soundness, but no flaw had been discovered?—I am prepared to say generally that the employer should be liable for any defect in his machinery.

443. Whether he was able to discover it, or not?—Whether he was able to discover it, or not.

444. In regard to the case which the Right Honourable gentleman in the Chair put to you; the first case, I think, that of Alexander Hogg, who was caught while putting on a belt, the machinery not being stopped, you would have workshop regulations requiring the machinery to be slackened, and put at a safe speed to admit of the belt being put on?—Yes.

445. Supposing the master had made such a workshop regulation, and still the men, for their own convenience, perhaps, or because they would not take the trouble of stopping the engine, attempted to put the belt on without slacking the speed, would you hold the master responsible in that case?—No.

446. On the ground that his order had been disobeyed?—On the ground that his orders had been negligently or wilfully disobeyed; in that case the man would also be contributory to his own accident.

Mr. *Hopwood*.

447. As I understand you, wherever the master employs a substitute for himself in charge, in that case you would make the master liable for any act of negligence of the substitute?—Yes, as though the act had been done by himself.

448. Then would you say, as a matter of fact, in such instances, there was no common employment?—I would say there was no common employment.

449. Then it might meet your views if that question were made a question of fact for the jury in each case to be decided on by them?—Yes; but perhaps I did not quite comprehend your last question.

450. I say the fact of whether the person whose conduct was impugned, and through whom it was sought to make the master liable, was in common employment or not, might be left to the jury; you could show evidence; and there may be cases in which it might be a disputable point how far it was a common employment?—I am utterly opposed to the plea of a common employment being put in in any shape.

451. But you understand that at present it is put forward by the lawyers and the jury, and it is taken out of the option of the jury?—Then to even place a case before the jury would be a clear gain.

452. You would not allow the plea of common employment at all?—Neither for the judge nor for the jury.

453. But still the dividing line, after parting with the responsibility of the manager, you say that there are cases in which the act of the fellow-servant might be one of such negligence as you think the master should not be responsible for?—Yes.

454. For instance, in the case of a fellow-workman chipping something into the eye of another, you think the master should not be liable there, unless it arose through some imperfect rules or regulations of the whole factory?—Yes, that is what I say.

455. Do you happen to know that there was a case of Scott against the Manchester Corporation, where they were held liable for the act of a servant chipping a gas-pipe, and a piece flew into the eye of a passer-by?—I am not aware of such a case. I can clearly understand that such a decision would be necessary.

456. They were liable for the act of the servant; there was no negligence on their part, but negligence on the part of the servant?—Yes, I can understand that.

Sir *Henry Jackson*.

457. I should like to be quite clear about your meaning; you object to common employment; can you conceive two kinds of cases in which such a defence as that might be raised; one class of cases in which the person responsible for the injury or accident was in what you may call a superior position, a man himself having authority over others; and the other class of cases, cases in which persons had no authority; would you draw any distinction between those two classes of cases; I mean this: I can understand well, if you take a mine, or an engine shop, the master might be very much more responsible and liable for the act of his foreman or manager, or chief of a department, than he would be for the act of a fellow-workman employed in the same mine or in the same shop, and doing the same work as the man injured; is there

Sir *Henry Jackson*—continued.

there any substantial distinction, do you think, between those two cases?—I consider that in the engineering trade, and in almost every other trade, almost every workman employed on a given job is to a very great extent in charge of that job; and being put in charge of that job by the foreman, he is in reality acting as the direct agent of the employer, and therefore the employer ought to be liable for accidents caused by his incompetency or negligence.

458. That is pretty nearly a negative answer to my question; I suggest that you might very well alter the law by making the ultimate master of the employer, either the railway company or individual, liable for the neglect of any person in a superior position, a position of confidence; that would be one thing; and yet it might be hard and difficult to make him liable for the neglect or carelessness of a person simply in the position of a servant?—There are cases in which the doctrine, if strictly applied, would be very hard; but I think that cases of that sort might safely be left to the discretion of the jury, if, in fact, they ever reached a jury.

459. You still do not make any qualification of your objection to the doctrine of common employment?—I do not make any qualification.

460. Let me test it by two of the cases which you have mentioned; take first the special engine case; you had there a man acting as the principal, having a right to enter into a contract which was intended to bring profit, and which did result in a very serious injury to a third person; now take the other case, of the man having his arm caught in a band; you say that if that man himself broke the rule of the shop, and instead of giving the signal to stop the machinery, took the chance of getting the band on the wheel without stopping it, he ought to be personally responsible, and the master ought not?—If there was a regulation to that effect.

461. Now supposing that that unauthorised act of the workman resulted, not in breaking his own arm, but in breaking yours, or somebody else's, would you then make the master responsible?—Do you mean with the regulation in existence?

462. I give you that, that there is a regulation to stop the machinery; assuming that that is *bonâ fide* carried out on the master's part, and that the foreman in charge would rather that the signal were given than that any risk should be run; then, assuming that a workman disregards the rule, and instead of stopping the machinery, does something which results in an accident, not to himself, but to somebody else; would you make the master responsible for the accident to the third person or not?—In that case I would not hold the employer liable, for the reason that he had taken all the means in his power to prevent the occurrence of any accident whatever by the regulations which he had posted up in his workshop; therefore I would not consider him liable in a case of that kind.

463. So that if you could show a jury that the accident was either inevitable from the nature of the case, as in the case of the accident from the pieces of steel that you described, or that the master had done everything which could be reasonably required of him to prevent the accident, then you would not hold him responsible?—In that case, were I a juryman, I would not hold him responsible.

Sir *Henry Jackson*—continued.

464. You think that the law should not hold him responsible?—I think that the law should not hold him directly responsible for a case of that description.

465. That would be leaving the question of common employment entirely out of the case?—Leaving the question of common employment out of the case.

466. You would be a little more liberal to the master in regard to the conditions of the accident; a little more liberal in giving him credit, or freeing him from responsibility where the accident was inevitable, or where he had taken every precaution; but you would not allow the question of common employment at all?—I would not allow the question of common employment at all.

467. But you would be disposed to make those allowances for him were you satisfied that he had done all he could?—Within certain limits; in such a case as the one we are speaking of at present, of putting on a belt, I would.

468. Your own personal knowledge on the subject relates rather to engineering than to any other branch?—More especially to engineering.

469. Just one word about your benefit club; have you considered what effect any alteration in the law would have upon the subscriptions of your institution?—It would not have any effect whatever.

470. You think not?—No effect whatever; because we should still continue to give the benefit exactly as we give it now, in addition to any compensation that might be received by a workman from his employer.

471. Supposing a man goes to a jury and gets what the jury think enough, would you still give him something from your fund?—Yes, 100 *l.*; because he would be entitled to that amount under the rules of the society, just as the insured railway passenger is entitled to his insurance after he has received compensation from the railway company.

472. You think, in practice, it would not diminish the amount which you would give?—It could not possibly do so, because we have a code of rules which we act up to with the greatest strictness.

473. Would not the tendency of such an alteration as you suggest be somewhat to diminish wages?—I do not see how it could diminish wages. My own impression is that it ought to have an opposite tendency.

474. Would you explain that, please?—If it were clearly understood by employers of labour in all parts of the country that they were liable for the acts of negligence or incompetence of their workpeople, then they would pay greater attention to the class of workmen employed by them, and by their foremen; and in employing a superior class of men to do their work they would get better results and larger profits, and, therefore there would be a tendency to increase wages rather than to reduce them.

475. You think that the additional liability on the masters would ensure greater care on their part in selecting good men, and thereby diminish the frequency of accidents?—Yes, I think so.

476. Are there enough of such men always to be had?—Sometimes not.

477. Then in that case when that happened, that answer would require some consideration,

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Sir *Henry Jackson*—continued.

would it not?—Yes, it would require some consideration in a case of that sort; also of that which is the means of making skilled workmen, who, I am sorry to say, are more and more disappearing from amongst us; that is, the system of apprenticeship in skilled trades.

478. Do you think that the making the master liable, striking out common employment, would have a tendency to increase apprenticeship?—I think that everything done with a desire to get a better class of workmen would tend in that direction.

479. In your judgment the effect of that increased liability on the master would be to raise the standard of the workmen?—To raise the standard of the workmen, and, I might also add, to make employers generally more careful of their workmen.

480. You do not quarrel with the present law which makes a master free from liability where contributory negligence is proved, as I understand?—I do not quarrel with that law.

481. You think that is reasonable?—Yes.

482. Would you be willing to extend the definition of contributory negligence at all, so as to include cases where an accident might have been prevented if the workman had taken the trouble, or had the courage to complain?—I would leave those to the discretion of the jury.

483. But speaking as an individual, as far as your opinion is concerned, do you think that such circumstances as I have suggested would be reasonably considered?—I could not undertake, sitting here, to define contributory negligence.

Mr. *Eustace Smith.*

484. You were asked a question about undiscoverable flaws in machinery; is that a common thing?—Not very common.

485. There are a great many causes that produce an effect, and they are said to be undiscoverable, because they have not been discovered before?—That is one of the reasons.

486. But I take it it is a very rare thing indeed for a flaw to exist and produce serious consequences, and not to have shown itself beforehand, if there has been proper supervision and inspection of the machinery?—That is so.

Mr. *Shaw Lefevre.*

487. Are you aware that at present a railway company is not responsible to a passenger, or the outside public, unless you can actually prove negligence?—I am not aware of that.

488. Are you not aware that they are not now responsible if the accident was due to some undiscoverable flaw in the machinery or the plant?—I am not aware of that.

489. You do not know that a passenger cannot recover against a railway company unless he can prove actual negligence. Do you know what the state of the law is on that point?—I do not know of any cases in which that has been determined.

490. Assuming that to be so, would you extend to the workman a security which the passenger or outside public have not against the employer?—I would not be disposed to claim for the workman any privilege under the law which is not possessed by the outer public.

491. If, therefore, a railway passenger cannot

Mr. *Shaw Lefevre*—continued.

hold the railway company responsible unless he can prove actual negligence in the case of the machinery or the plant, you would not give such a remedy to the workman?—I would not.

492. Now, I understand you to say, that though you would do away with the doctrine of common employment, you would not do away with the doctrine of contributory negligence?—No, I would not.

493. And if the employer had endeavoured to carry out proper rules in his workshop, then, although one workman may have broken those rules, you would not hold the employer responsible to another?—In that case I would not.

494. Let me apply that particular doctrine to the case of the stationmaster you mentioned, a case where the stationmaster did not telegraph that he was going to send an engine along the line, and in consequence of his not telegraphing to the adjoining station the other stationmaster was killed. Now, supposing the railway company had made a rule that in every case the stationmaster should telegraph the forwarding of any engine in that way, would you then hold the company not to be responsible?—I would hold the company, in that case, still to be responsible.

495. How is that consistent with the doctrine you have laid down?—Because the position of the stationmaster, in that case, is altogether an exceptional one; and, in some cases, I take it that the supreme officer in charge of a station would be enabled to take things upon himself, which were slight exceptions to the general rules of the company, specially in cases of emergency.

496. Supposing both the negligent stationmaster and the other stationmaster were on an exact equality in their position with reference to the railway company, and a strict rule had been made by the railway company that in no case should a stationmaster forward an engine or train without telegraphing to the next station, would you have held the company responsible?—The equality of the two officers would not, in my opinion, make the slightest difference.

497. Take the case of two workmen in the same mine; suppose the case that the mine owner has laid down a rule that in no case should a workman go into the mine with a pipe lighted; in a case where a workman had broken that rule, would you make the mine owner responsible to the other men in the mine?—I have read over the evidence given before the Committee last year, and that strikes me as having been a sort of standing question. It is one of the most extreme cases that can be stated.

498. Will you give us your answer to that question?—I do not know much about mining or mining operations; on that point I am not disposed to go so far as other witnesses have done, and I would not be inclined to hold the mine owner liable under such circumstances.

499. Is it not exactly on a par with the case which you have mentioned, namely, that of the belt; I understood you to say in answer to Sir Henry Jackson, that where the employer had laid down proper rules as to stopping the machinery when the belt was being replaced, you would not hold the employer responsible even to a person to whom an accident occurred, who was not employed in that particular work?—Yes, I said so.

500. Is not that precisely on a par with the case of the workman going into the mine with a lighted

Mr. *Shaw Lefevre*—continued.

lighted pipe?—I think so, and my answer is the same in both cases.

501. Let me take the other case of the starting of some machinery; I think you mentioned a case where a man was injured in consequence of a workman starting the machinery without notice; now, supposing the employer had laid down any rule on that particular work that the machinery should not be started except without notice?—The case I quoted is not exactly susceptible of being treated in that way, because this was work outside of the workshop altogether; in a brewery, in another part of the town.

502. Let me carry it a little bit further; supposing, when he gave directions about that particular work, he had said to the man engaged on it, "Now you take care not to start the machinery without notice," would you then hold the employer liable?—Yes, in that case I would.

503. Why?—Because he is placed in supreme charge of the machinery, and he is to all intents and purposes the direct substitute of the employer.

504. And his relation to the man is different in that case, you think?—Yes.

505. Is that the test that you would put it to in such a case?—Yes, that is the test which I would apply to it.

506. I only want to see how far your arguments join particular cases; you would hold the master to be responsible for any acts of his superior servant?—Yes.

507. Even though a master may have laid down rules for his special guidance?—Yes.

508. And although there may be proper rules and directions from the master to the principal agent as to the conduct of the business?—In the case quoted, I think it would be the duty of the employer not only to give such an instruction to the man himself, placed in charge of the machinery, but also to give instructions to the whole of the men employed, and to take special means to see that everybody was clear from out amongst the machinery before it was started.

Mr. *Tennant.*

509. You say you would do away with the doctrine of common employment altogether?—Yes.

510. Do you mean by that that you would make the liability of the master the same as applied to injuries done to his own servants, as to third parties?—Clearly, within certain limits.

511. But doing away with the doctrine of common employment, do you mean that you would place in the law exactly the same position, so far as the master's liability is concerned, whether an injury was done to a workman or to a third person? Yes.

512. Precisely the same? — Precisely the same.

513. Then your idea would be, that you would limit the law of liability as regards third parties, beyond what it now is?—I do not quite understand the point.

514. A master would now be responsible to third persons for injuries done recklessly by one of his servants, would he not?—Yes.

515. But you say that you would not make a master responsible for injuries done recklessly to a servant now by another servant?—That to my mind involves something like a point of law which I would not profess myself competent to decide, that is as to the recklessness. I am not sure that an employer is liable to a member of the outside public for the wilful recklessness of his servant.

516. You are mistaken upon that; he is liable in that case; but in future, at any rate, in an alteration of the law, you would not wish to make the master liable for the reckless acts done by one fellow-servant causing injury to another?—Not for the wilfully reckless act of a fellow-servant.

517. Or for any act that the master ought not to have prevented, or could not have prevented; would you make the master liable in the event of injury being done from some cause which the master had no reasonable power of preventing?—In that case I would not.

Mr *Burnett.*

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Friday, 27th April 1877.

MEMBERS PRESENT:

Mr. Bulwer.	Mr. Ripley.
Sir Daniel Gooch.	Mr. Eustace Smith.
Mr. Knowles.	Mr. Tennant.
Mr. Lowe.	Mr. Wyndham.
Mr. Macdonald.	

THE RIGHT HONOURABLE ROBERT LOWE, IN THE CHAIR.

Mr. JOHN BELL SIMPSON, called in; and Examined.

Mr. *J. B. Simpson.* 27 April 1877.

Chairman.

518. WHAT is your occupation?—I am a Mining Engineer at Newcastle-on-Tyne, and I am a part owner of several collieries in Northumberland and Durham.

519. You are aware of the object which this Committee is appointed to inquire into; the liability of masters to servants for accidents?—Yes, I have given considerable attention to that.

520. Could you state your opinion of the present law?—Our opinion of the present law is that it is quite sufficient to meet all cases; we think that it would be very hard if the coal owners were called upon to pay compensation for the negligent acts of workmen in such instances as men taking naked lights into dangerous places, riding on the tubs in the engine planes, unramming shots, and several other cases which are well known to those connected with mines. Those accidents are of nearly daily occurrence; and we cannot see that it would be just that the owners should be compelled to pay compensation in such cases.

521. But are there not cases where the question is not quite so clear?—There are other cases, of course, over which neither the owner nor the men have any control, such as sudden eruptions of gas, inundations of the mine, cases which no human agency could control. There may be another class which come within the bounds of carelessness on the part of the owners.

522. What do you say of them?—I say that if carelessness and negligence can be traced to the owner, he is liable. For instance, if he should provide insufficient material, or he should provide grossly incompetent managers, I think he would be clearly liable.

523. Now take that case; suppose he provides a manager who is not grossly incompetent, but is guilty of an act of negligence by which a man suffers, do you think that the man ought to have any remedy against the owner in that case?—I think he would have a remedy against the manager.

524. We know that he has that by the law now; but he has no remedy against the master?—I am not quite sure of the law.

525. Assuming for the moment that that is the law, do you think that that is a just law?—I think the owner endeavours to provide the very best management he possibly can get, because the interests of the owner, independently of the safety of the mine, are so very great that it is incumbent on him to provide the very best manager he possibly can get, and I think having done that he ought not to be responsible.

Chairman—continued.

526. If a man has a small mine which he can manage himself, he is liable for any act of negligence which may occur?—I should say so.

527. Do you think that a man by having a large mine, and being obliged to employ agents, ought to escape that liability, and be placed in a better position than the man with a small mine?—I think so, because he cannot possibly overlook the large mine himself; the small owner is only liable by reason of his personal act.

528. You have no suggestion then to offer as to the improvement of the law?—I have no suggestion to offer. We think that the law in its present form is quite sufficient.

Mr. *Tennant.*

529. What are your reasons for thinking that the owner of a large mine should escape liability because he deputes the management to another, and that the owner of a small mine, who himself manages, should be made responsible?—The owner himself cannot look into all the details; and I apprehend that the workman, when he undertakes to work for the coalowner, is aware of this responsibility; he is aware that there is a great risk attached to his occupation, and he takes the risk accordingly.

530. But do you think really that the miner knows that there is a different law for a small colliery from that which applies to a large colliery?—I do not think he does.

531. I do not quite see the reasons which lead you to the conclusion that a large mine should, in fact, be under a different law from a small mine?—Perhaps the reason does not seem apparent, but we seem to think that the responsibilities of the colliery owner would be so great if he was to be responsible for every act of other parties, that he would awake some morning and find that he was utterly ruined.

532. I was

Mr. *Tennant*—continued.

532. I was not going to that extent at all; I was merely going to the extent of why in the case of an owner who is unable, from the magnitude of the concern, to undertake the management himself, you should seek to absolve the owner from responsibility in that case any more than in the case of a mine where the owner himself directly manages it?—I think you know if the owner had put a grossly incompetent man in as manager, he would be liable.

533. He would be liable probably now in such a case as that; but assuming that he has exercised proper care in the selection of the manager, which no doubt any coal owner would do, but that the manager through inadvertence or some other cause is guilty of such negligence that some miner is injured or killed, can you give any reason why you think the owner in such a case as that should escape liability when, if he had been manager himself, he would have had to pay?—The enormity of the thing seems to me to be so great that ruin would stare in the face of the coal owner if he were to be subject to the faults of the best men he could possibly get. Any man whom he may appoint may commit errors of judgment, and I do not think the owner should be responsible for those.

534. If he were managing the mine himself, he would be responsible for those errors of judgment?—I think so for gross errors, but not accidents.

535. Then I understand that you think the law at present is sufficiently stringent?—We think so.

536. And sufficiently protective?—We think so.

537. If you made any alteration whatever, would you seek, at all events, to make the immediate causer of the injury primarily responsible?—Yes, I should.

538. But, leaving out the question of being responsible for the negligence of a fellow-workman, you say that the law as it at present stands is quite stringent enough against the owner?—We think so.

539. That is your opinion?—That is my opinion.

Mr. *Macdonald.*

540. Can you tell the Committee on what ground you would make the employed share the risk with a larger employer, and not share the risk with a small employer; you are satisfied with the law now, as I understand you?—We are satisfied with the law now.

541. You are aware that the law now is, that if a small employer gives an order which causes the death of a man, or an injury to him, he is liable?—Yes, but not for accidents.

542. You are satisfied with that law?—I think it is correct.

543. Will you tell me why it is that you think that the moment that an employer employs a manager the workman should share the risk; why should he share the risk in that case, when you say that it is not fair that he should share the risk with a small employer?—I think if the owner can look after the mine himself, he can then control his own acts, and ought to be responsible for them, but he cannot control the acts of another person. That person may do the best he possibly can, yet the owner ought not to be

Mr. *Macdonald*—continued.

answerable for the faults or errors of judgment of another man.

544. For whose interest does he delegate his authority?—For his own interest, of course.

545. And yet, though for his own interest he delegates his authority, you would say, that when that authority is delegated, other people should share the risk of his delegated authority, the workmen?—That would be, I suppose, the effect of what I have said.

546. Can you give any reason for arriving at that conclusion?—No, excepting that I say that I do not think that an owner ought to be responsible if he has done the best he possibly can to get the very best men to carry out his orders.

547. Is it your opinion, then, that he having done so, all the risk should immediately fall upon the employed?—How do you mean, fall upon the workmen?

548. In the case of the workmen serving an employer who orders and directs them himself, they have no risk; the moment that an employer delegates his authority, you say that the working men should share the risk?—They know the risk, of course, in both cases, and they ought to share it.

549. You have no reason to give for that?—I have no particular reason beyond what I have stated.

550. You mentioned that among the causes of accidents, one was sudden eruptions of gas, over which you had no control?—Yes.

551. You have had a large experience?—Yes, considerable experience.

552. And you have had very large experience in mine management?—Upwards of 20 years.

553. Have you ever seen such in your own knowledge?—If I had seen a sudden eruption, probably I should not have been here.

554. Then all the stories of sudden eruptions are the common stories of the district?—It is quite well known that there are sudden eruptions of gas; we have blowers of gas continually coming off.

555. I am asking you in your own experience, as a man of large experience (I know you are), have you ever seen any one of these sudden eruptions of gas to which you have referred?—I have not seen one, but I have been at a place very shortly after it has happened.

556. But did you know it was a sudden eruption of gas?—Yes, I did.

557. How?—It was not there one minute, and it was there the next.

558. Did you see that for yourself?—I can believe parties who have been there.

559. Then it is a mere tradition to you?—Well, it is sometimes a matter of fact, because the people are killed by it.

560. But you have not seen that yourself?—I have not seen it come off; I have not been there at the moment when a blower of gas has come off.

561. Nor in your long experience have you seen such a thing occur?—I have not been in a pit when a blower of gas has come off.

562. Has it ever occurred in your own mine that there has been a sudden eruption of gas, which would produce most disastrous effects?—Yes; I can give one particular instance, where a man was working in a place in Heburn colliery, and suddenly, without any notice whatever (the man was working with a safety lamp), an im-

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Mr. *Macdonald*—continued.

mense quantity of gas came off, which was so strong as to blow away 12 tons of solid coal out of its position between the roof and the thill, and to foul the place for hundreds of yards.

563. Did any fatal accident take place in that case?—Not in that case.

564. You mentioned that you thought it would be wrong in the case of men jumping on waggons and firing shots, that the employer should be liable for accidents resulting from that?—Yes.

565. Is it contemplated by the workmen that employers should be liable for such things; have you heard them stating that?—I have not heard them stating so, but I apprehend they would be if the Bill which is proposed be passed; the Bill implied that the owner would be liable.

566. You represent the Association of Durham and Northumberland?—I am representing the United Coal Trade Association of the North of England, which numbers about 70 per cent. of the collieries there.

567. You have rules for governing that association?—Yes.

568. Are any of the rules of that association directed to the carrying out of the Mines Act for the safety of the workmen?—No.

569. Do you find fault with a member of your association if he does not carry out the Mines Act in his colliery?—No, we do not; we have no power over him in that respect.

570. You do not interfere with him?—No.

571. Do you expel him?—No.

572. Do you look on him any worse if he comes before the magistrate and is tried for violating the Act?—We sometimes sympathise with him if it has not been his own fault.

573. I was coming to that; does the agent of your association appear for the owners charged, and defend them, and does the association pay for that?—No, certainly not.

574. Are you aware whether it is done in several instances?—I cannot give any instance of the kind. I can give many instances where they have not done so.

575. Are you sure that that has not been done in Durham of late?—It may have been; I am not aware of the fact.

576. But during your long course of management of mines, you have known quite a number of employers tried for a violation of the Mines Act?—Yes.

577. Have you known any one of them expelled from your association for having violated the law?—No.

578. Any intimation that they had done wrong?—Not to my knowledge.

579. If it had occurred would you not have known it?—The association has nothing whatever to do with the safety of mines. The association was simply for the protection of the interests of the coal owners; that is to say, to watch any Bills before Parliament which are likely to interest them or to affect them; it is the object of the association simply to carry that out. There are other associations, one of which we call the Northumberland Coal Defence Assocation, which is an association to discuss all the questions relative to wages; and we have also in Durham a coal association which does the same thing.

580. But I understand you then that you do not endeavour by your Association in any way to carry out the Mines Act, or promote the safety of the workmen?—No; but we established, several years ago, the Mining Institute, which had as its primary object the safety of the workmen, and the safety of the collieries; and I think that the proceedings which have taken place in that society, extending over 25 years, have been of very great assistance to the mining community; and all subjects relative to safety in working are thoroughly discussed; and there is no doubt this society has been of immense advantage to the mining community.

Mr. *Macdonald*—continued.

581. Valuable papers are there prepared and read?—Yes.

582. And your minds are familiarised with the subject?—Yes.

583. We had put to witnesses on the last day a question that I wish to put to you; whether workmen did not think that they had a right to complain against managers if anything was wrong; do you think a workman would be exercising his duty, or it would be in the exercise of his right as a workman, if he should be running to the employer with complaints against the manager?—I should be very much obliged to any workman who came to me, as a manager of a mine, to tell me that anything was wrong.

584. My question is not about coming to you as a manager; but what would you think of his going to your employer and complaining of you?—I should not like that exactly. If he came to me in the first instance, and if I did not give him any redress (which I should be sure to have done), then he might go to the owner. I have told my men in several instances, when they have come to me as deputations, that I should be personally obliged to them if they could find anything in the mines which they could suggest for the safety of the working of the colliery and of the men; and if it was reasonable I should carry it out at once.

585. Do the men examine the mines under you, under the 30th General Rule of the Mines' Regulation Act?—Yes, once in three months.

586. Are you aware that the workmen in the county of Durham have strict orders with reference to that?—No, I have not seen that.

587. You are not aware that rules on that point have been submitted to Mr. Bell?—No; I am only aware that the workmen at the colleries with which I am connected, regularly examine the workings, and the overmen are told by the managers to show them everything that is necessary, and to take them into every place in the colliery, both in work and out of work.

588. You think that it would be highly improper for a workmen to be going to your employer to complain of your conduct as a manager?—If I have done wrongly I think they ought to complain.

589. You do not think it is their duty?—I think it is the duty of a workman if he finds that the thing is not properly carried out, to complain. I have in several instances had camplaints of things not being right in the pit, and I have had the man who had complained, and the parties who were managing that part of the mine together, and gone into the matter; and if there was anything wrong found it was ordered to be rectified immediately on the complaint of the man, and the man did not suffer at all thereby. In the North of England we are quite as anxious to carry out the provisions of the Mines Regulation Bill as the workmen can possibly be.

590. Do

Sir *Daniel Gooch.*

590. Do you know any case where men have been dismissed for reporting to the managers?—I do not know a single case in our district.

591. And do you think the men would be dismissed even if they went direct to the owner, instead of to the manager?—I do not think they would, if the case was a proper one; but I think if the owner found that the man had complained without a reason he ought to be turned away.

592. The master's interest in a colliery is, of course, a very large one?—Yes.

593. And supposing one of these accidents to happen, which occur sometimes, involving the loss of a large number of lives, and the master to be held responsible for everything, would it not be a serious risk for the master to run, in fact, to carry on the thing?—Yes, he would wake up some morning and find himself ruined.

594. Would not that have a serious effect on trade generally?—I think it would tend to prevent parties going into the coal mines, and those who are in them would want to get out of them as soon as possible. I should not like to carry on a colliery myself if I was to be subject to that.

595. And that would fall back on the workmen as injurious to them?—Yes.

596. Is there any doubt that these strong blowers of gas do come out?—Not the slightest doubt about it.

597. And sometimes it happens from a fall of roof?—Yes, sometimes it happens from a fall of roof. I was called upon a short time ago by a friend of mine, a manager of a colliery, to advise in respect to a blower of gas which had come off; and when I went to the place there were then four blowers of gas coming off, which had been going on for several days, so that really I saw them coming off. The question which Mr. Macdonald put before was, did I ever see them commence to blow off.

598. Fall of a roof is a thing that often causes loss of life; is that an accident that can be always provided against, or foreseen?—In some instances it can, but in others it cannot. From the Mines' Inspector's Reports of 1875, it appears that the accidents from falling of coal and stone were 36 per cent. of the whole, and from explosion 23 per cent., in shafts 14, sundry underground accidents 19, on the surface 8.

599. Now, as to the liability of the workmen for these accidents, it would not be of any value at all if there was any pecuniary liability upon the workman himself?—He has no means of meeting it. The men ask the owner to be responsible for the smallest injury; but if a man commits some mistake which endangers the whole of a mine, or does some thousands of pounds of damage, the man cannot be made responsible; the owner cannot recover from him.

600. In the case of a master who has a small colliery which he looks after himself, would he be responsible, under the present law, if, when he had evidently done his best, from error in judgment an accident occurs?—I am afraid that is rather a legal question, which I can hardly answer.

601. You do not know any case that has been decided at all?—I do not know any case which has been decided on that point.

Mr. *Ripley.*

602. Do I rightly gather the general effect of your answers on this matter to be, that, with reference to a large employer having done his best in selecting competent managers, competent men to take the superintendence of his mines, he should be absolutely free from all responsibility in case of accident to the workmen?—Yes, I think so.

Mr. *Ripley*—continued.

603. Then with reference to the small owner and the large owner, you really place the small owner at an disadvantage as compared with the large owner?—Yes; for his personal act, simply because the small owner has the opportunity of exercising his own judgment, but the larger owner has not; he must delegate his authority to some one else.

604. Is it within your experience that the great majority of these accidents happen from the neglect or carelessness, or incompetency of the manager, or that they arise from some of the workmen who are in common employment with other workmen?—The negligent accidents that happen are chiefly from the workmen; I know few cases where the accidents can be traced to the manager of the mine.

605. Then in such cases where the accident happens from the carelessness of a fellow workman in common employment, whatever may be the law on the point, is it your opinion that the small owner of a mine should be equally free from liability as the large owner?—I think so, certainly.

Mr. *Bulwer.*

606. It has been suggested to you by some questions that have been put, that the mine owner ought to be liable on this ground, that he delegates his authority for his own sake. I presume it is absurd to suppose that some mine owners can manage their own mines themselves. Take Lord Durham, for instance; it would be impossible for him to manage all his own mines himself?—Impossible.

607. Therefore he must employ persons to manage them for him; is it necessary for the sake of the workmen, as well as for himself, that that should be done?—Most decidedly.

Mr. *Wyndham.*

608. You have told us that the owners of large mines are responsible for the accidents happening through the carelessness of their paid manager, while the owners of small mines are not so liable?—Because they had got no manager; the owner manages the mine himself.

609. There is a remedy against a paid manager for an act of gross carelessness?—Yes, most certainly.

610. Then, if the owner of a small mine, who might be considered not rich enough to employ a paid manager did do so, he then would not be responsible, but the paid manager would be?—The paid manager would be, of course.

611. In fact, I understand you to say that this responsibility is not in the least dependant upon the size of the mine, or the value of the mine, but upon the fact, whether the man who is managing be a paid manager, or the owner in person is there; it depends upon the presence of the manager?—It depends upon the presence of the manager.

612. It has nothing to do with the size of the mine?—No.

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Mr. *Knowles.*

613. As regards the owner of a small mine being responsible, you say you would make him responsible, because he has the management of his own mine, to what extent would you make him responsible; for anything but want of material or want of proper judgment to keep his mine safe, as far as the management went?—I would put him precisely in the same condition as the manager, that where only the manager would be responsible he would be responsible.

614. You would put him in the same category as the manager of a large mine?—Yes, as the manager of a large mine.

615. Would you make him responsible for the acts of his firemen and deputies, and all those under him; I am referring to the owner of a small mine that managed his own?—No, because I would not call those managers, I should call them common workmen.

616. We will assume that a man manages his own mine, but in order to enable him to do so, would he not require a Government certificate of competency?—He would do so. The Mines' Regulation Acts require that every mine must have a certificated manager, excepting in a very small mine. There is a freedom from having a certificated manager there; but the owner takes the responsibility of a manager.

617. In order to obtain a certificate the manager has to undergo an examination by an examining board, has he not?—Yes; the Home Secretary appoints in the first instance the examining board, and that board appoints two or three persons to conduct examinations.

618. Are the men represented on that board?—The men are represented on the board in the proportion of two out of seven, I think.

619. Have you heard any of the men's representatives objecting to a manager's certificate on the ground of his being incompetent, and not passing a satisfactory examination?—Not at all. In several instances the representative of the miners is one of the examiners.

620. It has been put to you, provided the manager or those under him are not competent and are negligent, would you make the mine owner responsible; if the man were to complain to the colliery owner of the manager, and show a fair case of incompetence or negligent habits on the part of the manager, do you think the owner would not listen to the men in that case?—He would most decidedly; if it could be proved that the manager was grossly negligent, it would be to the owner's interest to do so, and he ought to be thankful to any one who would complain of him.

621. That would be encouraged you think by the owner?—Yes.

Chairman.

622. You said that very few injuries to miners were the result of any misconduct or negligence on the part of the manager?—That is so in my experience.

623. I understood you also to say that if the master were made responsible for the act of the manager, you think that a master might wake up some morning and find himself ruined; that, in fact, it would so discourage the business of mining that it would almost destroy it?—That is my impression.

624. How do you reconcile those two statements?—I think I have previously said that if

Chairman—continued.

the Bill were passed, if we were to be responsible for the acts of the workmen, we might wake up some morning and find ourselves ruined; I meant with respect to the passing of the Bill in its present form.

625. Do you adhere to your statement in your former evidence in the main, or do you wish to qualify it?—If the Bill were passed in its present state the owner would be responsible for every accident that did take place, excepting, as I understand, those which could be proved to be as we say an act of God, or such that no human agency could control.

626. Then I do not understand you to say that if the master were made responsible for the mistakes of the manager, that would have this ruinous effect upon the trade?—No, I do not think it would exactly, but it might be disastrous in some cases.

627. How "not exactly"; would it, or would it not?—It would not be so serious a thing as making the employers responsible for the acts of all the workmen.

628. But would it be a serious drawback?—It would be more serious than it is at present.

629. But could it be a serious drawback?—I can hardly explain the degree in which it would be serious, excepting that it might be more serious than it is at present.

630. To the master; it would increase his liability?—It would increase the master's liability, most certainly.

631. Would it seem likely to approach to anything like ruin?—It might do if he was very negligent.

632. Did you not state that these accidents do not happen through the negligence of managers?—Very few do.

Mr. *Macdonald.*

633. You said that employers are very glad to be informed when managers neglect their duty; you have also acknowledged that a large number of managers have been convicted of breaking the law, the Mines Act?—I am not sure as to a large number; I think you stated that a number had been convicted, but I do not know the figures at all; I do not know the proportion as to the managers employed.

634. Have you read the Inspector's reports; I refer to the entire reports from the beginning to now?—No, I have not.

635. You have not studied them?—I have studied some of them.

636. Have you known of employers dismissing regularly persons who have been convicted of breaking the law; managers, I mean?—I have not known an instance; I do not know at present of an instance of a manager breaking the law.

637. In the counties of Durham and Northumberland in the last 10 years do you mean to say you have not known instances of their violating the Mines Act?—There are very few instances.

638. How many do you think there are?—I have no idea.

639. One hundred?—I have no idea.

640. Fifty?—I could not say at all.

641. Have you known a single case of a manager being dismissed because of his violation of the Mines Act after being convicted?—I do not know any.

642. Then does that look like an anxiety to protect

Mr. *Macdonald*—continued.

protect human life, when they continue those persons after they have been convicted?—You have to consider the circumstances under which the occurrence took place. If a man commits a slight breach of the Mines Bill, it does not follow that he should be dismissed; he might be more careful in future.

643. Do you call it a slight mistake if five, ten, or a dozen men lost their lives?—Certainly not.

644. With respect to Mines' Inspectors' Reports, are you aware that there are faithfully chronicled there all the disasters that have occurred this last 25 years?—Yes.

645. Are you aware that out of the whole explosions that have occurred, where above the number of four deaths have taken place, fully 8,000 of these have been declared by the Inspectors' Reports, or by the finding of juries to have been caused by neglect?—Do you mean neglect on the part of managers?

646. On the part of managers?—I was not aware of that.

647. Then I should advise you to study the document; are you aware that in the county of Lancaster alone, something like 100 have been convicted within the last five years?—No, I have not heard of it.

648. Have you ever heard of any manager being dismissed in Lancashire because of his neglect of duty?—I have not heard of it.

Chairman.

649. Is there anything else that you wish to state?—It might be interesting to the Committee to know what the owners of Durham do with respect to their workmen in case of accidents. I do not know what other districts do, but I find from statistics prepared, that the owners give in the shape of voluntary contributions to the men who suffer from cases of accident, and to widows who are left, a sum equalling 29,300 *l.* That is made up of contributions which are given every week, when a man is off work; 6 *s.* per week is allowed to every man who is off work through accident in Durham; and I think 5 *s.* in Northumberland.

Chairman—continued.

650. When you say that the owners give this, do you mean that they have given it altogether as a gross sum?—As a gross sum.

651. In how many years?—In one year, that is the annual payment; and we subscribe 20 per cent. in most instances of what the men subscribe to this permanent relief fund. We also find doctors to attend in all cases of accidents; and at some of the collieries there are hospitals; and in addition, there are other small charities which we will not enumerate; and a large amount is also yearly expended in the providing of schools and chapels and churches; we consider that passing any Act which would check the owners in carrying out these, as you may call them, amicable relations between employers and employed, would be very disadvantageous, and not desirable.

652. Is there anything else that you have to say?—I think I have nothing more to say.

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Mr. William Richard Cole, called in; and Examined.

Chairman.

653. What are you?—A Mining Engineer at Newcastle-on-Tyne.

654. Do you appear here to make some statement to us on the subject of our inquiry?—I appear on behalf of the North of England United Coal Trade Association.

655. You appear to have a written statement, would you like to read it to us?—Yes. The general law, as applied to miners, imposes a liability upon an employer which is sufficiently broad to be consistent with justice. The employer is only liable for injuries that are the result directly of his own negligence. For the result of injury consequent upon the negligence of a fellow servant the owner is not responsible, nor would it be equitable that he should be; the workman having entered upon his employment with a full knowledge of this, the negligence not being within his power to control, and the negligence in most instances leading to loss and injury to the owner. When an injury is sustained by reason of the owner not having provided what was requisite, or works of an insufficient character, or furnished materials of an unsound or defective description; or selected grossly incompetent servants, then the owner is, and ought to be liable, the act causing the injury proceeding from himself. In the case of coal mines the majority of accidents which occur, whose cause can be traced to any human agency, are the result of the negligence of some common workmen. The negligence in such cases, although committed during the period of their employment, arises from acts which are totally unconnected with the

Chairman—continued.

performance of the employment; that is to say, it arises from acts which it was in no way necessary or even expedient should be adopted by the workman for the purpose of executing the purpose of his employment. If, as an instance, the shaft of a coalpit fell in owing to its being insufficiently walled and timbered, in such a case the employer would be liable for injuries sustained by a workman, as the insufficiency of the walling or timbering was the result of not using due care in providing proper materials. The law reaches every possible case in which injury sustained by a workman in a colliery is attributable to the negligence of the master. It is impossible for a master to control the carelessness of a miner, in an act which is not done in the exercise of his ordinary employment, but which forbids it, and which is done in direct opposition to his duty, and for which it would be hard that a master, who had by the rules laid down for his workmen forbidden this, and which rules had been violated against his will, should be held responsible. For instance, a workman might negligently strike a light in a dangerous place where safety lamps were used, or exposed a candle, or negligently run over a fellow workman while driving waggons, or leave a door open when it should be shut; and there can be no reason why the owner should be held liable in such cases. The miners are quite cognisant of the risks that attend their employment. Then again as most accidents occur from some unavoidable cause, which neither the servant nor the master can possibly foresee, such as explosions of

Mr. *W. R. Cole.*

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Chairman—continued.

fire-damp, drowning out of a mine by a sudden rush of water, or a sudden fall of stone. In all these cases there is not a moment's indication of what is about to happen; and yet if the law be altered as suggested, in all these cases questions will be raised and endeavours made to trace them to some breach of duty devolving upon the master; and this would create differences between the men and their employers. The question would have to go before a jury for determination, a tribunal which always more or less sympathises with the sufferer; the expenses incurred in a case of a serious misfortune might be enormous; and in no case, when the master was shown in the end to be right, could he have any means of recovering from a mere workman the costs of such an inquiry. These cases would be taken on the chance of success by speculative lawyers, and so the owner would be involved in a mass of litigation which he had no means of preventing. But, as a matter of fact, injuries rarely or never result from negligent management, but either from some unavoidable cause, or from some negligent act of a workman over which the master had no control, or which was in no way incidental to the performance of his duties by a workman. In the case of a colliery, the only obligation entered into by the master is to employ and pay wages to the servant on the colliers entering into a certain employment, and executing certain work, which employment the workman knows puts him in peril, should there be misconduct or negligence on the part of a fellow-workman. Looking at all the surrounding circumstances of a miner's occupation, it is my opinion that to in any way relieve the miner of any individual responsibility would only tend to lead to laxity of action on the part of the workmen, and the consequence would be that an undue responsibility would be thrown on the manager and owner of the mine.

656. You state that accidents seldom or never happen through the fault of the manager?—Seldom or never.

657. Now, you are of opinion also that the master should not be responsible for the acts of the manager?—My opinion is that after proper care has been taken to select good workmen, and in every way to provide proper material for the due carrying out of the mine, he ought not to be responsible for those acts.

658. Perhaps you are aware that in every other position of life a man would be responsible?—I am not sufficiently informed on that.

659. Why do you think that he ought not to be responsible?—From the leaving of the pit-bottom to his returning, the miner has so much to do with his own individual safety that it would be in fact a very great injustice, I think, in case of an accident, for an owner to have to pay any compensation or claim for the negligence which the man had been guilty of.

660. Supposing that a miner suffered an injury (lost a limb, for instance) by the negligence, we will say, of the master himself, he would have a remedy against the master, would he not?—He has, I think, according to the present law.

661. Do you think that is just?—I think so. He has in a measure a remedy, provided there has been a want of material, say.

662. Supposing the master has been negligent in some matter?—If there has been negligence, and it can be proved that the matter had been brought before him, and that he had failed to carry out proper steps and improve the place where the man was working, I think he would be responsible.

663. And you think that is just, that the man is entitled to claim compensation in that case?—I think that is only fair.

664. Why should the master's delegating his authority to somebody else deprive a man of the compensation which it is just he should have?—In the case of a certificated manager, if it could be proved that he had neglected his duty, I think the workman would be able to claim compensation from him.

665. Supposing he was not able to give him compensation, should the man lose it because the master had delegated his authority?—I think the master would come to his assistance and pay any amount that might be given.

666. And supposing that the master would not, would you think it just that the man should lose his remedy?—I do not think that the master would get anyone to serve him in that case.

667. Do you think that the man should lose his remedy because the master has delegated his power to a person who is not able to pay?—The man would suffer in that instance.

668. Do you think it just or unjust?—I think it would be unjust if the workman had to suffer.

669. Then how do you propose that that should be remedied in the case where the manager has no money to pay?—It is seldom or never that managers are in that position.

670. But supposing the manager is in that position, is the man to lose his remedy?—The man would suffer.

671. But is it better that the man should suffer than the master?—I think the man ought not to suffer in that instance.

672. Then the master ought; is that what you say?—I think if the master did not come forward to support him it would be unjust on his part.

Mr. *Wyndham.*

673. Supposing A does an injury to B by carelessness, but A has no money to pay compensation for the injury, do you think that C, a third person, who did not do the injury, and was not present, but who has the money should, pay compensation?—I do not quite follow the question.

674. I will put it this way: supposing that I do you an injury, but that I have no money to pay you compensation, do you think that then the honourable Member on my right, because he had money should be made to pay it?—I think not.

Mr. *Bulwer.*

675. You have been asked about a question of justice just now: a case has been put to you in which a man, according as the law now stands, would have a remedy against his master, and a question has been put to you whether you think it just that the man should have his remedy; do you, putting it as a matter of justice, consider it just that a man who has committed no fault at all, who is utterly and absolutely blameless, should be made to pay for another man's fault?—I think not.

676. The law undoubtedly in some cases does make the master responsible where he is blameless;

Mr. *Bulwer*—continued.

less; you do not think that the law ought to be extended, as I understand you?—I think not.

Mr. *Ridley.*

677. Do the men in your part of the country pay into any common fund, from which they receive relief in cases of accident, or from which their wives and families get help in cases of death?—There is a permanent fund, which a great many of the workmen are members of, and to which the masters contribute 20 per cent. of the amount which the men subscribe to it. They have, I think, 6 *s.* a week in case of accidents, and when unfit to follow their employment they have 6 *s.* a week during the rest of their lives.

678. Are those funds distributed by a committee of the men, or by whom is the money distributed in cases of accident?—They have a secretary, and it is managed by a committee.

679. A committee of the men themselves?—Yes; and I believe there are one or two of the owners on the committee, honorary members.

680. In the event of the law being altered, so as to throw the responsibility of accidents in a mine upon the large owners, I may call them, who are necessitated from circumstances to employ managers, the workmen of course being aware that the responsibility was thrown upon the owners, do you think that that would contribute to the increased safety of the mine?—I think not.

681. Will you state why?—If you in any way were to alter the Act, I think it would have a tendency to make the men in a measure more careless. Here you have workmen who go into the place, and looking over the fatal accidents, we find that a very great many of them occur from the falls of coal, and there will be a great many injuries which are not fatal from the same cause; the man commences to work; he knows pretty well that if he does not stay his coal, there is a chance of its coming down; yet he perseveres, the coal comes down and injures him; in many instances he is killed; and I am only afraid that should the Act be extended it will only cause greater carelessness on his part.

682. You think that the workman should feel that a certain amount of responsibility rested upon him, as well as upon the manager, for the due and proper conduct of the work going on?—I think it is most imperative that it should be so.

Mr. *Macdonald.*

683. I think you stated that a great many accidents occur by the carelessness and negligence of the workmen?—Yes.

684. Have you studied the Mines' Reports at all?—Yes, I have looked through the reports of our own district very carefully.

685. Have you read the General Report?—I have; I have read the whole of the reports.

686. Have you arrived at your conclusion from reading these reports, made by competent persons; having read those reports, and seen the declarations of juries, do you yet declare that the greater portion of the accidents are caused by the workmen's carelessness?—Judging from the practice of our own northern district, seeing the accidents that there occur, and knowing that in many instances they do occur entirely from the carelessness of the workmen, I necessarily conclude that the same applies to other districts.

Mr. *Macdonald*—continued.

687. In the terrible slaughter of the accident at Hartley Main, was that from the carelessness of a workman?—It was from the breaking of a beam.

688. Was the Page Bank Mine accident from the carelessness of a workman; I refer to the case where they went and fired, and a large number of lives were lost?—That case is not particularly before me.

689. Then you have not really examined those cases; is it to your knowledge that employers dismiss managers that are convicted of breaking the Mines Act?—No; we have such very few cases of the kind that have ever occurred, that I have never known of any being dismissed.

690. Do you know of a single man being dismissed for having violated the law?—No, I do not at present, I never knew of any; I only know of two cases in the county of Northumberland where the manager was considered to be at fault.

691. How long was that ago?—It happened within the last 12 months.

692. Was the manager dismissed there?—No; it was just for want of having the machinery properly protected, and a person went in and lost his life in consequence.

693. In no case in your experience, then, has the employer ever expelled a member of this association for being convicted under the Act?—No; I do not know of any.

Mr. *Tennant.*

694. I understand you to say, that you think that, in common honesty, the master ought really to be responsible for the negligent acts of his manager?—Yes, I think so; I think he is.

695. You think that a workman ought to recover from somebody, and if he cannot recover from the manager, he ought to get it from the master; you think that would be fair?—I understand that is the present law.

696. But if it were not the present law, you think it fair that the master should be responsible?—Under those circumstances.

697. And would you make the liability the same on the part of the master, whether he had employed a competent or an incompetent manager?—I have not known of any instance where any man has ever been considered to be incompetent. Every care is taken by the owner to select the best man; a certificated manager is passed by the examiners as being a fit and proper man to manage mines; the other men that are employed as foremen, such as master-shifters, and in other occupations where they have charge of a district, or a few men, are all selected from the very best and most intelligent and steady people; and I have never in a single instance, in my experience, found the appointment of a man as manager objected to or found fault with by the workmen.

698. Then you would make it incumbent upon the master to employ competent managers, and that they should employ competent people under them?—I think that is so.

699. That you would think ought to be the law?—Yes.

700. And if an accident happened even then, supposing, for instance, a competent manager was employed, and an accident happened through his negligence (and the best managers are negligent sometimes), you think that it is only right that the workman should recover, and if he cannot recover

Mr. *W. R. Cole.*

27 April 1877.

Mr. Tennant—*continued.*

from the manager the owner should pay?—If it is clearly traced to the want of attention or negligence on the part of the certificated manager, I think the manager ought to be responsible.

701. And if the manager was not able to pay, that the master ought?—Well, I think when every attention has been taken to elect a proper and qualified certificated manager, I cannot see that the owner should be held responsible for a large undertaking.

702. That is exactly what you did say before; I am afraid we shall have to carry it a little further again; you say that it is only right that the workman should recover for his injury from somebody?—Yes, for gross negligence.

703. He ought to be compensated?—Yes.

704. If the certificated manager of a colliery, to whose negligence his injury is directly attributable, is not able to pay, from whom ought the workman to get it?—I do not see that it would be fair to come upon the owner who in no way could have prevented it.

705. Then supposing that the owner was himself a certificated manager of the colliery, as he might be, you say that he ought to be liable?—If he is certificated manager, managing the mine, having charge of it.

706. And yet if he chose to delegate that management to somebody else, he himself not being able to undertake it, being too rich, or having other occupations, you think he ought to escape from liability?—I think so.

Mr. *Knowles.*

707. You were asked as to the case where the beam broke, was that the fault of the men?—No.

708. Was it the fault of the master?—No, no one.

709. What do you attribute it to?—There was a great deal of inquiry on the matter; no one could attribute it to any cause.

710. Was it a pure accident?—A pure accident.

711. Now, as regards making the master responsible, providing he engaged a man that he knew to be incompetent, or that he had some doubt as to his competency, and an accident occurred, would you not then make the master responsible?—If it could be traced that he was cognisant of the inability of the manager, I think in every way it would be just.

Mr. *Knowles*—continued.

712. Then, with regard to a question asked as to your knowledge of a manager being dismissed because an accident occurred under him, providing an accident did occur in consequence of some want of forethought, or oversight, perhaps over-perseverance of some manager, would you in that case advise his being dismissed, providing he was as good and careful a man as you could possibly get under all the circumstances?—It would entirely depend on the act. Of course, we are all liable in some instances to err. I have never had a case of the kind before me. I never knew, in fact, a single instance of an underground accident where it was attributed to the careless act of the manager.

Mr. *Bulwer.*

713. You were asked just now whether you knew of any case in which the association to which you belong had expelled a manager who had been convicted, and your answer was no; but do you know, in the first place, of any manager having been convicted?—None.

714. Your answer seemed to imply that you did, and that a man had been convicted and not been expelled; you are not aware of any case of a manager being convicted?—No.

Mr. *Macdonald.*

715. Was not a manager convicted in the case to which you alluded recently?—A small penalty was put upon him.

716. Was he expelled?—No, he was fined 5 *l.*

717. Then he was not expelled from the association?—No; certainly not.

Mr. *Ridley.*

718. But in the event of a manager being convicted, and the owner not dismissing him, does not of necessity an increased responsibity rest upon that owner for not having dismissed him, in the case of any future accident; the owner must feel a greatly increased responsibility to rest upon him if he thinks it right to continue the manager?—No doubt of it.

719. Then, although the manager may not have been dismissed in consequence of having been convicted, is that an invariable practice on the part of coal owners, if they once employ a manager, to keep him for ever?—Certainly not.

720. If a man is found to be incompetent from any cause, I presume that, as in all other businesses, the manager is dismissed and changed?—He would be at once.

Tuesday, 1st May 1877.

MEMBERS PRESENT:

Mr. Attorney General.	Mr. Lowe.
Mr. Bulwer.	Mr. Macdonald.
Mr. Gibson.	Mr. Ripley.
Sir Daniel Gooch.	Mr. Eustace Smith.
Mr. Hopwood.	Mr. Walter Stanhope.
Mr. Knowles.	Mr. Tennant.
Mr. Shaw Lefevre.	

THE RIGHT HONOURABLE ROBERT LOWE, IN THE CHAIR.

Mr. G. FEREDAY SMITH, called in; and Examined.

Mr. *G. Fereday Smith.*

1 May 1877.

Chairman.

721. WHAT is your employment?—I am the Chairman of the Mining Association of Great Britain. I formerly had, *inter alia*, the local charge and management for about 35 years of the Bridgewater Collieries in Lancashire.

722. You have no longer that?—No; not in detail for the last four or five years, since the Act of Parliament was passed defining particularly the duties of those who have to go underground and take charge. Will you allow me to say that we are somewhat unfortunately placed, as an association. We had two solicitors, both of them particularly able men; one of whom had prepared a brief to be given here, and he has unfortunately died; and the other has been taken seriously ill in the last two or three days, and is now ill at Bournemouth. I shall, therefore, have to do my best in their absence.

723. Have you any statement that you wish to make to this Committee on the subject which has been referred to them?—I have.

724. Will you have the kindness to make it?—I should like to ask in the outset that some little misapprehensions that exist outside should be cleared away; at all events I am sure they will be in the Committee. A notion seems to have got abroad that coal proprietors, colliery managers, and indeed colliery workpeople, are rather of the colour of their occupation, rather black in character. I wish to claim for them the same feelings that actuate other men; and as far as my own long experience goes, I can most honestly testify that there is as great an amount of right feeling, of consideration, and of everything that ought to influence the character and conduct of real men amongst the colliery population, be it the colliers or the manager or the owner, as there is in any other employment whatsoever. Then I wish to say that the principle upon which I wish to give my evidence is, first of all, to show that the civil law of this country, be it derived from the Saxon law, or from the Roman law brought in by the Normans, does not, as far as I can ascertain and believe, acknowledge the principle of the employer compensating his servants for injury done

Chairman—continued.

to them by others in a common employment. If such a principle is introduced at all, it will be entirely novel, and the very strongest possible grounds ought to be shown why the law should be changed in a direction which for the last 1,000 years it has not run in. My principle is joint interest, so to speak, and joint responsibility between the employers and the employed; that each of us, no matter in what capacity, should have an interest in keeping things as safe and as orderly as we can; and I believe that if we can devise a means (which I think can be devised) for securing such a result, they would be far stronger than any legislative enactment that the responsibilities shall rest upon one man's shoulder or another's. The greatest safeguard against accidents is, as stated in the Report of the Select Committee of the House of Commons on Accidents in Mines in 1835 (I quote the words): "To employ every effort to make the workmen acquainted with their individual responsibilities, and those theories and principles, both as regards lamps and proper ventilation, upon the observance of which their personal existence and that of their comrades, are at stake." Those are the principles, and that is the result arrived at, by a long inquiry into the subject, under the presidency of Mr. Pease, then Member for Darlington, I think, in the year 1835, which I attended. But to aid in accomplishing this, education, above all things, should be fostered as much as possible, habits of sobriety, self-reliance, and industry. My conviction is, that if the men were, as I hope they shortly will be, better educated; if they learnt habits of sobriety, self-reliance, and industry, they would be less liable to be misled into false principles of political economy and false lines of conduct, by paid agitators. As regards risk, the great question is, what is it that the employer really contracts to do in engaging his men? In the first place, he lays out his mine, and works his machinery in such a manner, and of such a class as to provide as far as possible (at least he ought to do so) for the security of the lives of the men as well as for the convenience of working.

Secondly,

Mr. *G. Fereday Smith.*

1 May 1877.

Chairman—continued.

Secondly, he looks out, or ought to look out, for proper managers, and proper petty officers, such as firemen and people of that class. But in the choice of managers he is limited by Parliament to a small selection, and Parliament, *pro tanto*, becomes a partner of his risk. I know a case at this moment (although I do not, for obvious reasons, wish to mention the particular colliery) where the proprietors are seeking for an additional manager, and they cannot, although they have sought for months, find one whom they consider suitable.

725. Will you state what the Parliamentary limitation is?—That managers must pass an examination, and be generally competent in knowledge and in intelligence; but there are so many other requisites that are necessary for a manager, that it is not always easy to obtain them in combination.

726. But those are the Parliamentary limitations to which you refer?—Yes, and I believe, that Parliament includes the principle that the man should have a character for good conduct; but you want in a manager, a person who can manage men as well as works, a person who can work economically, a person who has the confidence of the men (and also the confidence of the master), and much depends upon gaining the confidence of the men. Thirdly, the master employs workpeople who, on being engaged, thoroughly well know, that under the best possible circumstances, great risk must accompany their occupations. Next, it is to be remembered, that it is an absolute impossibility for either owner, manager, or petty officer to guard, at all hours and at all times, against the possibility, either of mischance or of misconduct. Again, the officers and such owners as have accepted the office of certificated managers, risk their own lives, and are aware that their own lives are as much at stake as those of the workmen; while the owners, be they large or small, run a continued risk also of the loss of their property by accident, whether occasioned by negligence, or otherwise. Now supposing that an accident happens while the owner is underground, and that he, his manager, and a number of workpeople lose their lives through the wilful fault or actual negligence, or disobedience of one of the workpeople, and the mine may at the same time be irreparably damaged; is it pretended that the widow of the owner (a small owner perhaps, who began as a workman, and by dint of hard saving and industry has earned a moderate competency), in addition to the loss of her husband is to be ruined, and probably pauperised, by compensating the families of the workpeople; and I suppose also, of the manager, she herself being the only person who receives no compensation? Again, supposing the manager loses his life, as well as the workpeople, is the manager's widow to receive compensation from the owner or not? It is not clear, to my mind, whether the Bill brought in by the honourable Member for Stafford would include that. If the workmen receive compensation, why not the officer; and if both officers and men receive compensation, they are, so far, in an equal position, and on equal terms; and if so, why should there be a distinction made between the owner's liability when the manager or petty officer is to blame, and when the workmen alone are to blame? The essential principle that really pervades the position of the parties is, that the great bulk of them are, practically, partners with the masters, namely, that the wages rise and fall according to the state of trade; but the moment an accident happens, no matter by whose fault, we hear no more of the partnership.

Chairman—continued.

727. And the responsibility is to fall upon the master?—The principle is new to the English law, so far as I know, that the civil responsibility should rest upon him in such cases; and it must be borne in mind that the owner has to find, no matter whether trade is good or bad, the money every week for the men, besides finding the machinery and finding also capital, which may be jeopardised at any moment.

728. You say, "the responsibility is to fall on the master." Do you mean that the law would impose it upon him, or what do you mean?—I meant that it is proposed that the responsibility is to fall upon the master in case of an accident. Let us look at the matter from a national point of view. It is to the interest of the nation that the mines should be developed; it is also to the public interest that the workmen should be self-reliant, intelligent, and industrious. I lay a stress upon the word "self-reliant." The way to make them so is not to give them a ready means of falling altogether upon somebody else under all circumstances, but to make each of them, both men and boys, feel that a personal responsibility rests upon them, and to give to every man in the mine a direct interest in making, not only the manager, or the petty officer, but his comrades do their duty; I entirely deny the position, so far as my own experience goes, that the men are afraid of appealing to the masters if the master is a man of ordinary sense, against the wrong acts of any manager whatsoever. Now, how is this to be accomplished? It is harrowing, no doubt, to the feelings of every one to see a number of widows and orphans turned adrift on the world, no matter whether through drunkenness or other fault of the parent, or husband, or from unavoidable accident. It is also most important to encourage thrift amongst the people. Personally I should welcome (I speak of my own individual opinion here, but I have thought a great deal about it) a legal enactment constituting, either for the county, or the district, or even for the colliery, a large benefit society based upon a rate per man, or per boy employed, to which the owner should be compelled to contribute weekly a fixed per-centage, and to which every person employed in a mine should be compelled also to contribute; and the master should not be allowed to employ any one who did not contribute. The funds should be managed by a joint committee of master, or manager, and work-people; and it would be the direct interest of every person in the mine to prevent his neighbour from doing what might cause an appeal to this fund. A committee should hear applications for a relief from it; but the greatest care should be taken in framing the rules, to prevent improper applications from being acceded to. I would suggest also that the relief should not be of such a class as to be considered as compensation, but rather as relief only. I put it upon the principle of relief and not on the principle of compensation; that is to say, supposing a number of women had lost their husbands in a pit, I would rather put it upon the principle that no matter whether there has been blame or no blame, if it has been a pure accident,

Chairman--continued.

accident, if it had arisen from an act of God, which, of course, no one could control, let them have this, not as compensation (you could hardly put it as compensation, for instance, for an act of God), but as relief from their difficulties, dependent upon the number of children they have to bring up, the ages of the children, and the general conditions of the family.

729. The plan you propose would be insurance?—Practically so.

730. Not relief?—Perhaps relief is the wrong term; insurance is a better word. The next witness will explain the details of an association similar to what I am now describing. If the principle enunciated in Mr. Macdonald's Bill became law, it should not be forgotten that, perhaps, a hundred witnesses to one would be ranged against the master, whilst no doubt the sympathy of the neighbourhood, and especially of the female portion of it, would naturally be with the sufferers, whether blame attached to the master or not. If you legislate at all you must legislate, I think, for the following cases: the case of a limited liability proprietary; the case of an owner, such as the late Lady Londonderry, or Lord Durham, or Lord Dudley, or the Bridgewater Trustees, owning large collieries and working them by means of agents or managers, and also the owners of small collieries who themselves, from the smallness of their collieries can act, and do act, as certificated managers; and when they die the collieries belong, perhaps, to their widows with small means. There is no reason why the responsibility or liability in any one of these cases should be legally different from that of the others (excepting in one that I will come to), though, if a working collier knew that if he worked for a rich man he might obtain his compensation, and if he worked for a small limited company, or a widow with small means, he and his fellows could perhaps not obtain it, the latter class of proprietors might be placed at some disadvantage with the rich ones. As regards the civil remedy, the civil law, as I understand, punishes nobody but the person actually at fault upon the principle that *culpa tenet suos auctores*. I believe that the decisions of the House of Lords have, in several cases, rejected the principle that the master should be civilly responsible to his own servants where he himself is not to blame. It is not, I submit, for the interest of either the nation or the workpeople, that the working of mineral property should become so full of pecuniary risk as that none but speculators, or men of straw, should ultimately be found to enter upon it. The Mines Regulation Act has on an average increased the cost of working coal from 1 *s.* to 2 *s.* per ton. Coal is so much the foundation of this country's prosperity, that any increase of the cost of production places it *pro tanto* at a disadvantage with the mines of America, Germany, France, Belgium, and may be India. The iron trade it is well known is already suffering severely by competition with foreign countries, and care should be taken that while the philanthropists are diligently seeking for optimism in the relation of labour and capital, they do not succeed in placing capital at the absolute mercy of labour, and thus driving it to foreign countries to the serious injury of this country, which practically means throwing the burden of the National Debt entirely upon the land. I will, with the permission of the Committee, read a short paragraph from a letter that Mr. Krupp, the well-known German, has lately addressed to his workpeople, bearing upon the last remark that I made. It does not apply in every detail to the case, but it bears very much upon it: "England," he says "grew great and powerful through her industry. Then her workmen formed unions, and struck work to enforce higher wages from their employers. This has caused work to a great extent to be sent abroad and away from England. German industries have benefited by the mistake of the English workmen. Let this be a warning to you; if their bad example be followed, our industry also will be driven into other countries." I wish to show this, that if an industry is unduly burdened, no matter whether it be by strikes, or legislation, or other difficulties, the result will be increased that Mr. Krupp tells us exists already to a certain extent against our English industry. It is idle to talk of the men being afraid of offending the masters. Taking good and bad times, as an average, the men are quite as much masters of the situation as the masters themselves, and oftentimes more so. Another consideration that I submit ought not to be lost sight of is, that many coal proprietors have been themselves for long terms of years under heavy engagements to pay royalties without the smallest possible expectation that legislation, such as that of the Bill, would be either proposed, or carried out. These men already suffer from some of the provisions of the Mines Regulation Act, which compels them to undertake an additional expenditure. I am speaking now of lessees of coal mines who pay royalties, and who are bound to heavy rents often times many thousands a year, which must be paid. Now, if they are further placed in the position of imperilling their fortunes from day to day in a manner over which they can have no real control, mining enterprise must necessarily be disparaged, and evil, both social and commercial, must necessarily ensue. The great principle, therefore, that I advocate is community of interest, and community of responsibility. Now I will read some quotations, chiefly from Dunlop's Reports, also from Macqueen's. In the Bartonshill case, which went by appeal to the House of Lords upon the plaintiff's appeal, the judgment of the Court of Session was sustained, the judgment of the court being announced by the Lord Chancellor Cairns, and concurred in by Lords Cranworth, Chelmsford, and Colonsay, formerly President of the Court of Session. In the course of the opinions the Lord Chancellor said, referring to the Roman or Civil Law: "The master is not, and cannot be, liable to his servant, unless there be negligence on the part of the master in that which he, the master, had contracted or undertaken with his servant to do. The master has not contracted or undertaken to execute in person the work connected with his business. The result of an obligation on the master personally to execute the work, in place of being beneficial might be disastrous to his servants; for the master might be incompetent personally to perform the work. At all events a servant can choose for himself between serving a master who does and a master who does not attend in person to his business. But what a master is, in my opinion, bound to his servant to do, in the event of his not personally superintending and directing the work, is to select proper

Chairman—continued.

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Mr. *G. Fereday Smith.*

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Chairman—continued.

proper and competent persons to do so, and to furnish them with adequate materials and resources for the work. As I have said in the case of Tarrand, negligence cannot exist if the master does his best to employ competent persons; he cannot warrant the competency of his servants." So Lord Colonsay, as the result of all the discussions in which he had been engaged, made the following remarks:—"I think that there are duties incumbent upon masters with reference to the safety of labourers in mines and factories, on the fulfilment of which the labourers are entitled to rely, and for the failure in which the master may be responsible. Neglect to provide a system of ventilation may be of that character, culpable negligence in supervision, if the master takes the supervision on himself, or, where he devolves it on others, the heedless selection of unskilful and incompetent persons for the duty; or the failure to provide or supply proper machinery or materials, may furnish good grounds of liability, wherein if the master fails, he may be responsible. On the other hand, there are risks incident to occupations more or less hazardous, and of which the labourer who engages in any such occupation takes his chance. It is eminently so in regard to mining operations. There are perils of the pit as well as of the deep, and one of those perils is the risk that may, even in the best regulated pits, result from the carelessness or other fault of one or more of those persons composing the organised body engaged in working the mine. The master does not impliedly insure the workmen against such perils." In considering the question of adherence to some general principle, the Committee will find material assistance by looking at the opinions and reasoning of the learned judges who have had to deal with such questions. The fundamental principle is that the consequences of fault adhere to the party to blame, according to the maximum *culpa tenet suos auctores*. But in cases of third parties suffering injury through a servant, it has been assumed that the maximum *qui facit per alium facit per se* generally applied, no matter what might be the special capacity of the servant causing the injury, for considerations assigned and pointed out. Here we have a general principle which can be applied according to circumstances. But when it was sought to apply this to the case of parties engaged in one common employment, the learned judges held that the maximum could not be so extended, because of a well-defined reason, namely, that the whole of these parties were so engaged in one common occupation, on entering upon which they knew, or must be held to have known, the risks attending that common employment. In applying some remarks, which I need not trouble you with in detail, Lord Cranworth proceeded to say: "I do not at all question what was said by the Lord President (in the Court of Session) that the real question in general is what is common work. But in the present case there appears to me to be no doubt that Shearer (the person in the case) and the miners were engaged in a common work. It is not necessary for this purpose that the workman causing and the workman sustaining the injury should both be engaged in performing the same or similar acts. The driver and guard of a stage coach; the steersman and rowers of a boat; the workman who draws the red-hot iron from the forge, and those who hammer it into shape; the

Chairman—continued.

engineman who conducts a train, and the man who regulates the switches or signals, are all engaged in common work. And so in this case, the man who lets the miners down into the mine in order that they may work the coal, and afterwards brings them up, together with the coal which they have dug, is certainly engaged in a common work with the miners themselves. They are all contributing directly to the common object of their common employer in bringing the coal to the surface." His Lordship then referred with approbation to a decision in the Supreme Court of Massachusetts, in which he says, "the Chief Justice discussed the whole subject, holding that Plaintiff and Whitcom (who had done the injury) must be considered as servants engaged in one work, and that every servant engaging in a service attended with danger must be supposed to take on himself the risk of all perils incident to the service, including those arising from the carelessness of fellow servants employed in the same work." In these views the other law Lords concurred. Here, then, we have the highest judicial minds of this country and of the United States concurring in carrying out a general principle founded upon considerations of equity and common sense; and obviously, if that principle was a sound one, it could not be limited to an engineman, or any other particular workman, but must apply equally to all engaged in the common service. The judgment was appealed to the House of Lords upon another case, and again the general question was brought under discussion, when the Lord Chancellor (Cairns) spoke as follows: "A master is considered as bound to guarantee third parties against all hurt, arising from the carelessness of himself or of those acting under his orders in the course of his business. Third persons cannot, or at all events may not, know whether the particular injury complained of was the act of the master or the act of his servant. A person sustaining injury in the modes I have suggested has a right to say, 'I was not party to your carriage being driven along the road, to your shooting near the public highway, or to your being engaged in building a house. If you choose to do, or cause to be done, any of these acts, it is to you and not to your servants I must look for redress if mischief happens to me as the consequence.' A large portion of the ordinary acts of life are attended with risks to third parties, but no one has a right to involve others in risks without their consent." This consideration is alone sufficient to justify the wisdom of the rule which makes the persons by whom or by whose orders these risks are incurred responsible to third parties for injury resulting from want of good skill or caution. "But," says Lord Cairns, "do the same principles apply to the case of a workman injured by the want of care of a fellow workman engaged together in the same work? I think not;" and then he proceeds to quote the words of Lord Cranworth in the previous case. I have already referred to the point that up to 1872 a mineowner might select his own manager; at present he is limited. I think that is all I need trouble the Committee with at this moment.

Mr. *Tennant.*

731. I do not think I quite understand the conclusion you have arrived at in your own mind on this matter; do you think there should be

Mr. *Tennant*—continued.

be a different law applied to different collieries?—No.

732. You think it should be the same law whether a man manages his own colliery or deputes the management to another?—Quite the same.

733. And what are your reasons for thinking that it should be the same?—The whole burden of what I have been reading goes to show that if an owner of a large colliery does his best to select a good, and competent, and efficient manager, he is relieved from any acts, ordinarily, that that manager would do; but if I, for instance, am the proprietor of a small colliery, so small that I can with propriety act, not only as owner and manager of the commercial part of it, but as manager underground, viz., as a certificated manager, it is impossible in that case that I as certificated manager can do anything that I, the owner, do not concur in; because I am the manager, and I am the owner; and, therefore, any act of the one must be the act of the other.

734. But assuming that the collieries might be exactly the same size, and one might be managed by the owner in person, and the other might be managed by a certificated manager of his appointment, why, in the one case, do you think that the workman should be able to recover, and that in the other he should not?—I never stated that the workman should be able to recover in either case.

735. He can do so only by law; if the master is working his own mine at this moment, and an accident happens, the workman could recover?—Yes, by the present law, if the master were culpable.

736. But I want to know if you can tell me why you think there should be a different law because the master has deputed his authority to another?—I consider that it is the same law, but the circumstances compel a different application of it, for this reason, that it is absolutely impossible to separate the act of the owner of the small colliery that you are referring to from his position as manager; he is both; and if he chooses for economical reasons, or for any other reasons, to accept the duties and responsibilities of the two positions, he must necessarily be liable to have those duties so intermixed, as that he takes practically the additional responsibility involved; and I think it is reasonable, because, if it is a wrong thing for him as manager to give a particular order, he, as owner, knows that it is wrong, and yet he does it; it is the same thing as if he were to order a manager in the case of a large colliery to go and do a wrong thing. Supposing an order is given that a ventilating fan is to be stopped, when it is manifestly wrong that it should be stopped; if the owner of a large colliery gives an order to his manager to stop that fan, that owner relieves the manager of his responsibility and takes it himself. Again, if in a small colliery, the owner in his capacity as manager, stops the fan, he takes the responsibility on his own shoulders. I think it is the same law.

737. I did not take the cases of a small colliery and of a large colliery; I took two of the same size, and your doctrine, as you laid it down without further explanation, seemed to lead almost to this, that any prudent owner of a colliery would appoint a manager.—I did not mean it to do so, and I do not think it quite does so.

738. You think that the law of liability is quite

Mr. *Tennant*—continued.

extensive enough as it at present exists?—I think it is.

Mr. *Macdonald.*

739. If the Earl of Dudley thought fit to manage all his collieries, would you treat him as a small owner, and make him responsible?—Yes, I would do so.

740. If the Earl of Durham undertook the management of his collieries would you treat him in the same way as you would treat a small owner, make him responsible for his conduct in regard to the orders he may give which may lead to the injury of his workmen?—Yes, but I hope the honourable Member will not misapprehend my answer to the last question; the hypothesis is an unlikely one.

741. I am not asking what is likely, or unlikely?—Will you kindly repeat the question.

742. I asked the question if the Earl of Durham thought fit to manage his own collieries would you regard him in the same light as the owner who managed a small colliery, and make him responsible for his own acts?—By which I presume you mean he manages the collieries without the intervention of certificated managers.

743. Yes; or if he took the certificate himself?—Yes, precisely.

744. Then how is it that because he does not manage himself, and delegates his authority to another, you will not make him responsible for the act of that person he delegates it to?—I have already stated that the law of this land for a thousand years has not adopted the principle that he should be responsible, excepting for his own fault. The language which I quoted in the technical phrase, *culpa tenet suos auctores*, practically means that nobody is to be punished unless he himself is culpable civilly.

745. What is your authority for saying that that has been the law for a thousand years?—A passage from Lord Cairns. In the previous part of my evidence I stated that, so far as I knew, so far as I have been able on inquiry to ascertain, and so far as I have learned by discussing the matter with the various lawyers whom I have come across (and I have done so), I cannot find a single instance of any decision of any superior court in the history of decisions where the principle of civil liability of the employer for damage done to one working person through the negligence of another is recognised.

746. I have asked you to give me your authority; you said Lord Cairns; did Lord Cairns in any part of that decision to which you have referred say that that had been the law for a thousand years?—No.

747. Will you tell me if this law was ever heard of before the case of Priestley *v.* Fowler, with regard to the liability of one fellow workman to another?—I cannot answer that. It is the absence of liability that I speak of; the law does not recognise the principle of liability, and the principle would be a new one; and, if such a principle were introduced, I believe it would be the first time that it had ever appeared in our legal system.

748. Are you aware what the law of Scotland was?—The first case that I quoted just now was a Scotch case, the Bartonshill, if I remember rightly.

749. Are you aware that the decision of the

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Mr. *Macdonald*—continued.

Bartonshill case was for the plaintiff in the Scottish court?—Yes, and it was upset on appeal by the House of Lords.

750. Was there ever any case before that in the Scottish court so decided?—I cannot answer that.

751. You do not really know whether that was so for 1,000 years, or not?—I do not know whether it was 1,000 years. I doubt if the Scotch courts are quite that age.

752. I am sorry to travel into any matter foreign to the inquiry; but you have made a statement on which I find it my duty to put a question or two to you; you have said that the present state of the iron trade was suffering from competition with foreign countries; what country in particular are we suffering from?—America chiefly I was referring to, that is to say, that our exports of iron to America have fallen off most seriously in consequence of the Americans manufacturing themselves cheaper than we are able to import. I had that in my mind when I made the remark.

753. Cheaper than we can send it; do you assert that here?—That is what I fully and firmly believe.

754. Are you aware that there is a tariff duty of 29 *s.* 2 *d.* on every ton of pig iron that is imported into America?—I am aware that there is a large duty upon it.

755. I ask you whether you are aware that it is 29 *s.* 2 *d.*?—I do not know the exact amount.

756. Are you aware that the harbour dues of New York alone amount to a dollar?—It may be; that does not affect my argument.

757. Are you aware that within the last three months 24,000 tons of pig iron were sold in America from England, thereby cutting out the American producer, nothwithstanding that high tariff?—I am so informed.

758. Then how can you tell this Committee that we are beaten in the market of America?—Because the case you refer to is a purely exceptional one, and I believe that you cannot find another.

759. Are you aware that there is a tariff of 12 *l.* 10 *s.* 6 *d.* on every ton of steel ingots or bars, to prevent British steel from entering the American market?—There is a heavy tariff on those articles, and probably in order to equalise the prices.

760. What is the object of the tariff on these two forms of iron?—I presume that it is twofold; one for purposes of revenue; but the most important reason is, most probably, to keep our iron out of competition with their own American manufacture.

761. Is it not to prevent us from competing with them?—My answer covers that.

762. You stated in your evidence, I think, that the law of America is the same as the present law of England on this matter?—I quoted a case.

763. And you quoted a decision of Chief Justice Storey in the Massachusetts Court?—I think so.

764. Perhaps you could tell me whether that form of the law existed in England first and was copied in the United States, or was in the United States first; did it precede or follow the decision in the case of Priestley *versus* Fowler?—I have already stated that so far as I know the principle of the civil law of this country from the time of the Conquest did not admit the liability of an owner for the misdoings of his workman as against another workman in the employment; the principle did not exist in England at all, and does not exist now; it never has existed to the best of my belief; and consequently if such a principle may exist in any other country it must necessarily be prior to its existence here, for it never has existed here.

Mr. *Macdonald*—continued.

765. Did the decision of Judge Storey precede or follow the decision of Baron Alderson in the case of Priestley *versus* Fowler?—I do not know.

766. Is the law on this question, at the present moment statutory law, or is it judge-made law?—I have said the law does not admit the principle.

767. I have asked you if it is judge-made law, or if it is statutory?—I have read to the Committee Lord Cairns' judgment upon the question.

Mr. *Eustace Smith.*

768. I think I understood you to say that if large owners, such as Lord Dudley or Lord Durham, were liable to pay compensation for accidents which occurred in their mines, small owners would be at a disadvantage with their workpeople; am I right in that?—What I meant to express was, that if a work person knew that in case of accident he was sure to obtain compensation from a wealthy proprietor, and was not sure to obtain compensation from a poor proprietor, that might have the effect of leading him to engage himself to the wealthier owner by preference.

769. And therefore the wealthier coalowner would be at an advantage in either obtaining a better class of work people, or obtaining the services of those work people at a lower rate of wages?—It would be open to that result, to a certain extent.

770. Therefore if your principle were carried out, that large owners and small owners should be treated the same by the law, there would be no injustice to your mind in putting this responsibility upon the large owner, because he would get a corresponding advantage in being able to deal with his work people beforehand on more advantageous terms?—The advantage to the owner would be absolutely infinitesimal; it would exist, but it would be infinitesimal; whereas the disadvantage to him of being liable with his whole property, it may be, to make good a compensation for an accident with the cause of which he had nothing whatever to do, would be, as I stated, before you entered the room, very large and very serious, and totally unknown to our civil law.

771. But if there be, as there is, such great competition among coalowners, and between large and small owners, do not you think that a change in the law which would be such a great disadvantage to the small owner, would surely be something more than an infinitesimal advantage to the large owner?—The disadvantage to the small owner would probably exist, but it be small.

772. You think it would be very small?—I do indeed; of course it would be larger than the advantage to the larger proprietor, because if you employ 10,000 men, everything affects you differently to what it would if you employ only a dozen

Mr. *Eustace Smith*—continued.

dozen men. But I only mentioned the matter incidentally; it was a point in the discussion.

Mr. *Ripley.*

773. The proposed Bill which you have read, has special reference, you said, to mines and mining operations?—I said that the arguments had, and the principles upon which it had been discussed had; but as I understand the Bill, it applies to other things as well.

774. You do not understand that it applies to mines, and mines only?—I have not so read it.

775. Then, do I gather from your experience of opinion generally, that it would be a very great mistake on the part of the Legislature to remove the responsibility which at present rests on the employed, whether it be a workman or an underground man, or a manager, where they are, in point of fact, in common employment, such a removal of responsibility possibly tending to carelessness on the part of the workmen?—On general principles I should certainly say yes; I cannot see the distinction very much excepting that as regards mines, the difficulty that the master has to encounter are immeasurably greater than in other trades, but the same principle underlies the whole.

776. From time to time in this country, and in other countries also, we are startled by hearing of these fearful accidents in mines, and thereby special attention is attracted to coal mines; have you had any experience of the accidents which happen almost daily, unfortunately, in other occupations throughout the country (take ironworks, for instance), where no such notice is taken of these accidents in consequence of their occurring daily and public attention not being called to them?—I am very much struck, in looking at the history of the past years, with this result; the accidents which arise from explosions, which are usually the cause of these unhappy hecatombs are very grave, and serious, and they cause a vast deal of public sympathy whenever they do occur, and perhaps in some sense, comparatively with other accidents, they cause more sympathy than should be caused; or rather I would put it, that the other accidents cause less; and for this reason; with an explosion you have a large number of persons perhaps killed; everybody hears of it, everybody thinks of it, and everybody sympathises. But if you look at the average of explosions, I should think it could not be much more than 20 per cent. of the whole; whereas the average of ordinary accidents, which occur almost week by week in one part or another of the country, from falls of roof and things of that kind, and which often perhaps injure or kill one person or two persons, are not so much thought of, but, in the aggregate, those are really the most dangerous accidents that we have to encounter. For every 20 that there are killed by gas, I believe 40 are killed by ordinary casualties, which do not move the public nearly so much, but in reality they quite as much deserve the sympathy of the public and of those engaged in the trade as the explosion. And the same remark applies to the case that you have put, an accident in ironworks, men being burnt, or something getting into their eyes; there it is just upon the individual, not wholesale, and consequently the public are not moved about them, but they require the same mode of treatment,

Mr. *Ripley*—continued.

and the master claims, and ought to claim, the same protection in each case.

777. In the event of an owner being made responsible for the act of a competent underground manager in coal works, I presume it is imperative that for the act of a manager and submanager of an ironworks the owner should be also responsible?—I think the same principle is applicable to both.

778. It is not, perhaps, within your experience to know the actual number of accidents that happen in ironworks, which employ a vast number of people, and in collieries?—No, not as regards the ironworks; I could not state it with any degree of accuracy.

779. You were asked by the honourable Member for Stafford whether, in your opinion, if Lord Dudley, or Lord Durham, took upon themselves to manage their own collieries they ought to be made responsible for the injuries which might result; I presume you really meant by your answer that it would be so ridiculous that men in such a position should do so, that they would deserve to be made responsible?—I rather meant that if a nobleman or other owner who had not been brought up to the business, should undertake the underground management of collieries where there were some thousands of people employed underground, he might be thought deserving of being sent to a lunatic asylum. It is such an improbable hypothesis that I was surprisd at the question, if I may be pardoned for saying so.

Mr. *Bulwer.*

780. You are not a lawer, as I understand you, are you?—I am a barrister, but I do not profess to be so well up in these matters by any means as those who are constantly in practice.

781. You have been here asked some questions by the honourable Member for Stafford in reference to the law, which you seem thoroughly to appreciate; now, as I understand, your view of Priestley and Fowler is this, that the law always was as is laid down in Priestley and Fowler, but that Priestley and Fowler was the first instance in which it was endeavoured to infringe upon the principle of law by making the master liable?—That is what I understand.

782. Are you aware that the view which you have expressed has been expressed by Lord Chief Baron Pollock, that the law always was as it was laid down in Priestley and Fowler; but that Priestley and Fowler was the first attempt to alter it?—I do remember that; I believe I have the report of the very judgment here.

783. You have been asked about judge-made law; does that convey any definite idea to your mind?—By judge-made law I take it is meant the repeated decisions of supreme courts, not the mere passing dictum of any ordinary judge.

784. Supposing I were to knock you down in the street, and you were to bring an action against the honourable Member for Stafford upon the ground that he and I were both Members of Parliament, and the judges were to decide against you, though it was the first time that such a case had been raised in a supreme court, should you say that that was a judge-made law?—Hardly.

Mr. *Shaw Lefevre.*

785. Do you know enough of the cases which have been decided to form an opinion as to whether the judges have been gradually restricting

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the liability of master and employer in this matter?—I know that Mr. Justice Brett's feelings evidently went in a direction in which he found he could not go as a judge in giving his judgment. I mentioned before you came into the room that I appeared here in reference to these legal questions in consequence of both of our solicitors being unable to come; one has died, and the other is seriously ill.

786. But have you sufficiently looked at the cases which have been decided in the law courts to form an opinion on that point, whether the judges have, from time to time, rather restricted the liability of employers, and extended the rule as to common employment?—I am not able to answer that question.

787. Are you aware that in Scotland the law was very different at one time from the law of England?—I am.

788. Much more favourable to the servant?—More favourable to the servant; at least I have so understood it.

789. And that the House of Lords eventually reconciled the law of Scotland with that of England, by applying the law of England to that of Scotland?—Yes; but I think in the judgment that was given, the Chancellor stated that in reality there was not so great a diversity as at first sight appeared. I have read the judgment that you refer to, and I was struck with that remark; I cannot give you the date.

790. The result was that the law of Scotland was virtually brought into harmony with that of England, and was made less favourable to the employed than it formerly has been?—To a slight degree I believe.

Mr. *Knowles.*

791. With reference to the small coalowner and his responsibility, providing he had obtained a certificate of competency, and managed his own small colliery, and was the owner also, and if he provided proper material, and used proper discretion himself, would you make him responsible for every error of judgment, or for his orders not being carried out, by his foreman, or underground man, or overman?—Certainly not; I do not propose to alter the general principles of the civil law as regards that point; the civil law at present makes nobody responsible, except the man absolutely in fault, and whether he is a large proprietor, or a small proprietor, I propose to apply the same principle in both cases.

Mr. *Knowles*—continued.

792. Provided any accident occurred in the case of such a small owner, in consequence of his indiscreet order or want of providing proper material, you would make him responsible?—"Indiscreet" is a dangerous word. If he was guilty of culpable negligence, I would. A man may be indiscreet for want of possessing proper judgment, and yet he may have done his very best, and all that many other persons probably would do, excepting that one man's judgment may be better than another's.

793. Do you think it would make it any more difficult to get good managers of collieries if the law was made more stringent than it now is, in making managers responsible to any greater extent than they now are?—Certainly I do; I think it would necessarily advance their salaries very much; people would not take responsibility without being paid for it; and, secondly, I think a good many people who are very willing to act in positions of that kind now would be very timid to take a responsibility which might at any time ruin them.

794. In your opinion, has the present Mines Act had any such effect in making managers more difficult to get?—Certainly it has. I was mentioning a case just now. They are necessarily more difficult to get; but I hope that in time, by education and one thing and another, the general class of colliers, and the whole body of working people, will be improved, and I hope (it is only a hope) that the difficulty may vanish, at all events decrease.

795. With reference to education, what is your opinion as to the owners of collieries and works generally fostering education, and also advancing the knowledge of their workmen?—I am very strongly in favour of it.

796. Do you think it is carried out generally by the owners of mines?—I do not know that it is very generally carried out, but the new system of education will provide for that.

Mr. *Macdonald.*

797. You said that it would be very ridiculous on the part of the Earl of Dudley to manage his own colliery?—Lord Durham, I think I was speaking of.

798. Is there anything much more ridiculous in managing a colliery than in managing a playhouse or theatre?—That is a question I would rather not answer, if you would excuse me.

Mr. Alfred Hewlett, called in; and Examined.

Chairman.

Mr. *Hewlett.*

799. What is your employment?—I am a Coal and Iron Master at Wigan, in Lancashire.

800. Have you any statement to make to the Committee?—I have.

801. Will you make it?—I am the managing director of the Wigan Coal and Iron Company, which company employs about 10,000 workpeople, and raises about a million and three-quarter tons of coal per annum. That is the present quantity; it would be more, but times have been so bad, that we have had to stop some of the pits altogether, and to work others short

Chairman—continued.

time. I have considered the questions before the Committee as affecting mines. I do not think it just that masters should be liable for injuries occasioned to their servants by the negligent acts of their certificated managers of collieries. It must be borne in mind that mining is, from its very nature, a dangerous employment; that they who engage in it, from the manager downwards, know that it is so; and that they are undertaking a common employment from which danger is inseparable. It must also be remembered that the rate of remuneration is greater than to other classes of labour, because of this risk. It cannot be

Chairman—continued.

be said that mining works are conducted for the sole benefit of the owners. The miners participate in the profits; because when trade is brisk, wages rise accordingly, and the men therefore get a share of the profits, with this advantage to them, that in bad times, although wages are reduced, yet wages have to be paid even when the works are being conducted at a loss. Certificated managers are appointed under the provisions of the "Coal Mines Regulation Act, 1872;" and no mine can be worked unless under the control and daily supervision of such a manager, except a mine in which less than 30 persons are employed below ground, or of which the average daily output does not exceed 25 tons. Even then the inspector for the district can by notice in writing require that the mine shall be under the control of a manager. A Secretary of State appoints the board for examination; three owners, three persons employed in or about a mine (not being owners, agents, or managers), and three mining engineers, with one inspector. The board so constituted appoints the examiners, who conduct all examinations of candidates, and the board has to report to the Secretary of State. The Secretary of State is to grant certificates to every applicant who is duly reported to have passed an examination satisfactorily, and to have given satisfactory evidence of sobriety, experience, ability, and general good conduct. On representation made to the Secretary of State by an inspector or otherwise, that a manager is by reason of incompetency or gross negligence unfit to discharge his duties, or has been convicted of an offence against this Act, the Secretary of State may, if he think fit, order inquiry; and the Court (appointed under the provisions of this clause) may cancel or suspend the certificate of the manager. So that the Legislature in effect appoints the managers of mines, and there cannot be said to be any want of consideration shown towards the persons employed in any mine. The owner must employ a person approved by the Secretary of State, but anyone may ask for his removal. Again, the persons employed in a mine may, once a month, examine all the workings, machinery, &c., by two of their number. And an owner, agent, or manager guilty of an offence against the Act, which in the opinion of the Court was reasonably calculated to endanger the safety of persons employed, or to cause serious personal injury, may be fined or sent to prison for not exceeding three months, with or without hard labour. The safety of the persons employed in the mines is most stringently provided for in the Acts; pains, penalties, and imprisonment are enacted against owner, agent, and manager for breach of its provisions. If, in addition, the owner is to be made liable for the acts of certificated managers (appointed be it remembered by the Secretary of State) and also for injury to one person caused by another in the same common employment, but over whom the owner cannot exercise direct control, it would be inflicting a great injustice on the owner and placing upon him a burden which he ought not to be called upon to bear, and which, in many cases, he could not bear. The owner has, in my opinion, done all which can possibly be required of him when he has carried out the provisions of the Act in appointing certificated managers and suitable appliances and watching the general

Chairman—continued.

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conduct of the men and enforcing the rules as provided by the Act. In my opinion the effect of such provisions as were suggested would tend to danger rather than to safety, inasmuch as it would take away that spirit of self-reliance which now exists, and would to a large extent, debar miners from trying to keep their fellows from breaking the rules laid down for safety. It would certainly tend to constant litigation between employers and employed, and would do away with the good feeling which now, as a rule, exists. In my own district (as in some others) there is now a society for affording relief in case of accident, and also to the relatives in case of death by accident. It is called the "Lancashire and Cheshire Miner's Permanent Relief Society." It is managed by eight ordinary and six honorary members; the former being persons employed in or about the mines in the district, and the latter persons subscribing 1 *l.* annually, or a life donation of 10 *l.*, and all coal-owners who subscribe 10 per cent. on the amount paid by members and by half members employed by them. The honorary members have no claim to benefit from the funds of the society. It is worked by the local agencies, one for every colliery or mine, or two or more collieries or mines may join to form a local agency, and these agencies are conducted by the miners. Contributions are as under, namely, entrance fee, full member (over 14 years) 1 *s.*; half member (under 14 years) 6 *d.* Contributions full member, 3 *d.* per week; half member, 1½ *d.* per week. Benefits, accident disabling from work 8 *s.* per week for full and 4 *s.* per week for half member, in addition to medical attendence, or relief at hospital or infirmary. Fatal accidents; to widow or relative of each married member as funeral allowance, 5 *l.*; relative of unmarried member having no dependent relatives chargeable to the fund, 20 *l.*; relative of half member, 10 *l.* In addition to the above payments the widow of each married member shall receive the sum of 5 *s* per week, so long as she remains a widow, and conducts herself with propriety. Children's allowances, 2 *s.* 6 *d.* per week for each child of any married member whose life may be lost through fatal accident; in case there be no widow or widower, the person undertaking charge of the child or children may be allowed an extra sum of 2 *s.* per week for one child, 1 *s.* 6 *d.* for the second, and 1 *s.* 6 *d.* for the third, so long as the children remain chargeable to the fund; but in no case shall this extra payment exceed 5 *s.* per week. Payments to continue until the sons attain the age of 12, and daughters of 13 years. If a disabled member should die from effects of his accident, then the widow, child, children, or other dependent relative receives relief as before named. This society was established in 1874; at the end of 1876 there were 22,977 members; in 1876, 88 widows and 205 children were relieved and 3,913 cases of disablement were relieved. The ordinary revenue in 1876 produced 16,083 *l.* 16 *s.* 2 *d.*; the expenditure was 12,827 *l.* 10 *s.* 7 *d.*; the available balance on 31st December 1876 was 13,828 *l.*; whilst in the year before it was 10,815 *l.*; 11,820 *l.* are invested in public securities. I venture to suggest that such a society forms a bond of union between employers and employed, prevents litigation, and above all makes it the interest of every member to see that discipline and rules for safety are properly carried out and obeyed. And

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it is worth considering whether it would not be desirable to make such provisions compulsory both on employer and employed.

802. Have you anything more that you would like to add to that statement?—No.

Mr. *Knowles.*

803. I will ask you a question with reference to some evidence which we have on the note. On the 27th of April, that is at our last sitting, the question was put by one of the Committee to Mr. Simpson, if he knew how many managers had been convicted in Lancashire alone, and he was asked if something like 100 had not been convicted within the last five years for neglect?—I saw that question and the answer, and I have got the inspectors reports for the last five years and have examined them, and the result is as follows: that there have been 18 convictions in the last five years. I might add that several of those are for old shafts being unfenced, which scarcely comes under a question of colliery management; it is a provision of the Act, no doubt, and a breach of that is a breach of the Act, still it is not a question affecting the lives of the workpeople, but rather those of the public. I think three out of the 18 were of that class.

804. You have given us the payments from your provident fund and the contributios. I see, on the evidence of Mr. Pickard, representing Yorkshire, that he stated that they had a provident association connected with the miners' union, to which they paid 1*s.* a week, and which entitled a man's family at death to 6*l.*, and his widow to 4*s.* a week, and, if she had any children, to 1*s.* a week for each child; do you consider that a very excessive contribution?—The society ought to be very rich in that case, because the payment is very much larger than with us, 1*s.* instead of 3*d.* per week, and the receipts are 6*s.*, instead of 8*s.*, as compared with our society.

Mr. *Ripley.*

805. You stated that so many widows and so many children were relieved in 1876; do I understand you to mean that they were once received or that they were in course of continuous relief?—Continuous relief.

Mr. *Macdonald.*

806. You mentioned that you have a permanent relief fund; are you aware that such a fund exists among the miners of Northumberland and Durham?—I believe it does; indeed, I know it does.

807. Are you aware that it has 70,000 members?—I am not aware of that number.

808. Are you aware that such a fund exists in North Staffordshire?—I think it is defunct in North Staffordshire, I am not sure; I know that there was one there. I named specially that such a fund existed, not only in my own district, but in others; I know it is so in others.

809. Are you aware that similar provisions are made among the miners themselves, in the counties of Clackmannan and Fife, in Scotland?—No, I am not aware of what is done in Scotland.

810. Are you aware that such is also in existence in Cheshire?—Yes, because our society extends to Cheshire.

Mr. *Tennant.*

811. You gave us some interesting statistics about this benefit or insurance society; do you think that that society would be at all impaired if the law were altered?—Certainly it would; if the law were altered in the direction indicated, I for one, should not subscribe at all towards it, because it is a voluntary contribution; I should save my money for litigation in future if the law were altered. We should be in a constant state of warfare with our men, and should have to defend ourselves, and therefore all questions of charity would be gone. I speak for myself absolutely, and I think I may speak for the trade also.

Mr. *Tennant*—continued.

812. Now do you think that it would increase the liability of masters to any appreciable extent if they were made responsible for their substitutes or certificated managers?—I do. I think it would increase the risk very largely indeed.

813. Do you think many accidents are directly attributable to the certificated managers?—I do not think that so many accidents are directly attributable to them as to others; but there is always the risk of that. For instance, supposing there were a great explosion the certificated manager in all probability would be down the pit. It might be held, it being most difficult to prove the origin of such things, that he had caused that; then the master would have to compensate all the poor people; it might be ruin to him.

814. You would deprecate any further extension of the liability of the master?—In that direction I should, certainly.

815. Would you still keep up the distinction between a master who manages and a master who does not manage?—I think that distinction is visionary, and for myself I do not think that there is such a distinction. I am not a lawyer, and therefore have no right to say what the law is; but, with great deference, I do not think the distinction does exist.

816. And you think there ought to be no distinction?—No, I think not. If a colliery proprietor chooses to become his own certificated manager he should be precisely in the same position as another person who employs a certificated manager.

817. Then you mean you could take away from the master, who is his own certificated manager, the responsibility that now rests upon him. I am assuming that it does rest upon him?—I would certainly.

818. And you would put them both exactly in the same position?—Clearly.

Mr. *Bulwer.*

819. Are you aware now that if you manage a colliery which is your own colliery, and an accident happens through your negligence, you are liable?—I do not know that.

820. I am not saying an accident caused by the negligence of a fellow workman to another fellow workman; I mean through your negligence?—I am not aware that it is so; but if it be so, I think it ought not to be so.

821. I merely wanted to understand what your view of the law is. You are perhaps not aware, then, that if your coachman drives over a passenger in the street you, the master, are liable?—Yes, I am; but that is quite a different thing; there is no community of interest there; at any rate, in my judgment, that is quite a different thing.

Mr. *Knowles.*

822. As questions on the subject were asked frequently of the representatives of Northumberland and Durham, I will ask you this question, do the men employ their own assistants as drawers in Lancashire?—Yes.

823. The men there are the employers of the boys generally, as putters and drawers?—Yes.

824. That has been asked with regard to Yorkshire, Northumberland, and Durham, and they say that there they do not employ their own boys?—It is the case in most districts in Lancashire; that has been the rule from time immemorial; the men employ the drawers or haulers.

Mr. *Macdonald.*

825. Does the boy who is employed by the workmen require to go to the colliery office and enter his name in the book as being employed in the colliery?—No.

826. Is he not amenable to the rules of the colliery?—Certainly; every person employed at the colliery is amenable to the rules of the colliery.

827. So that his employment to a fellow workman merges entirely into subordination to the rules of the colliery?—He is absolutely amenable to the Mines Act.

Mr. *Ripley.*

828. He is engaged in this employment subject to the rules of the colliery; not that his employment merges into subordination to the rules?—No; I did not quite follow the honourable Member's question; but he is engaged subject to the Mines Act of 1872, which, as the honourable Member is no doubt aware, is posted up all over the works at certain places provided by the Act.

Mr. *Ripley*—continued.

The Act provides that it should be so and every one who is engaged is employed subject to that Act.

Mr. *Macdonald.*

829. So that he is subject to the special rules of the colliery for his conduct, and not to the orders of the person who employs him?—No, certainly not; he is subject to obey the rules, which rules are enforced by the officers.

Mr. *Tennant.*

830. In such a case as that he is, in fact, selected by his immediate employer?—Yes.

831. And paid by his immediate employer?—Yes; he is engaged by his immediate employer, but subject to the rules provided by the colliery and the Act of Parliament.

Mr. *Knowles.*

832. Does the boy come to the office for his own wages?—No, we do not know him, further than I have named, except he is a boy under a certain age, which is fixed by the Act; in that case he is entered in a book, but otherwise we have no cognizance of these boys, except inasmuch as they are liable to the discipline of the colliery and the rules of the Act.

Mr. *Macdonald.*

833. Do you not enter the names in Lancashire of all persons employed in the colliery?—No, we do not.

834. Are you aware whether such a practice is followed in a large number of districts, that all names are entered?—I do not know that that is so in other districts; I know it is not in Lancashire.

Mr. Francis Harold Pearce, called in; and Examined.

Chairman.

835. What is your employment?—Mining Engineer and Colliery Manager for the Bowling Iron Company, the oldest iron making and iron smelting firm in Yorkshire; it is near Bradford.

836. Have you any statement to make to us?—I consider that the present Mining Act is fair and equitable upon both the owner and workpeople, and I see no need for further legislative enactments to throw obstacles in working of coal and iron-stone mines upon the colliery owners of this country.

Mr. *Macdonald.*

837. Are you satisfied with the present law of liability?—I have heard these questions asked before, and I will explain to you what my views on the subject are. The law now is that a colliery owner can appoint a manager, and when he appoints that manager, the whole of the colliery workings are thrown on to him; he has power to spend the owner's money in what way he likes, to stop the pit and to conduct the works as he thinks fit and proper for the safety of the workpeople, and the owner has to find him money to do that. That makes a distinction then between a man who takes upon himself to manage his own place, and a man who employs another person; that the Government have admitted is a qualfied man to take the management of a colliery.

Mr. *Macdonald*—continued.

838. What distinction does it make?—It makes the distinction in this way, that if I spend my own money, it is a very different thing from giving somebody else charge over it to spend it for me.

839. Has anybody asked the owner to appoint another person to spend his money?—The law of the country gives him power to appoint a person to act for him. He could not act for himself; colliery owners cannot all act as managers; very few of them are brought up for managers; they are money proprietors.

840. Why cannot they act as managers?—They are not brought up to the business.

841. Could they not learn it?—Yes they might possibly learn.

Mr. *Ripley.*

842. How long have you been connected with the working of collieries?—I have been with the Bowling Iron Company since 1850.

843. And you have had considerable experience in the management of their collieries during the whole of that time?—Yes.

844. You have heard a question asked as to the underground management of collieries and

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Mr. *Ripley*—continued.

colliers employing their own boys; will you state the practice with you?—In West Yorkshire the colliers employ their own boys, and they are paid out of the colliers' earnings, but these boys are subject to the rules of the collieries; all their names are entered, and they are subject to the rules the same as the workman is, only he takes them as his assistants.

845. Do you consider that the underground managers, all the men who are above the colliers, and superintending them, are acting so far in common employment, that it would be a great mistake to throw upon the owner the responsibility of any accidents which should happen by the carelessness of the colliers working together?—Yes, I think it would be very unfair. The colliery manager, having the power of appointing all his assistants, the underviewers that act with him as well as the workmen.

846. You have not only had large experience in the management of collieries, but to some extent you have been continuously engaged about the ironworks of the company?—Yes.

847. And you experience has led you, has it not, even if it is not actually within your own cognisance, yet to be well aware of the various accidents that happen, not only in collieries but in other works?—Yes.

848. Could you give the Committee any idea of the relative number of accidents that happen annually in the collieries and in the ironworks?—In the Bowling collieries we employ 2,000 workmen, and the number of deaths we have annually averaged two; I think rather short of two; and taking the amount we pay for the doctor's bill every year, I find that two-thirds of the money goes for the ironworks, and one-third to the collieries; that the colliery accidents are one-third of the iron works, the number of men being considerably more in the collieries.

849. In the event of the responsibility of men in common employment being at all relieved by some Act of Parliament, whereby the owner was entirely made responsible for the accidents caused in ironworks or collieries, would that, in your opinion, tend to reduce the number of those accidents?—No, I do not think it would; the men that are now employed in different trades enter upon their occupation knowing its danger and risk, and if the Bill was passed it would bring inferior men into the trade; it would have a tendency to do so.

850. I think you stated that the Company provided in case of accidents at the works of the collieries, a surgeon free, irrespective of the question what may have been the cause of the accident?—Yes, in all cases of injury they provide medical assistance.

851. And in various other ways they give help and relief from time to time in case of accident?—Yes, they allow me power to use my discretion.

852. In the event of the question becoming one of litigation, almost of dispute, between the owner and the employed, would that, in your opinion, remove from the owner, I will not say all kindly feeling, but all feeling of responsibility as to doing anything whatever to help these workpeople?—I take the question to mean this, if this Act of Parliament tends to throw such a feeling of responsibility upon the owner; I think it would tend to do that.

853. If an Act of Parliament was passed which threw the responsibility upon the owners of ironworks and collieries for any accident whatever which might happen on those works, would such an Act tend to take away the feeling of responsibility which leads the owner to give help in various ways, and which he does freely and voluntarily?—Yes.

Mr. *Ripley*—continued.

Mr. *Bulwer.*

854. You are a certificated manager?—Yes.

855. Did you undergo an examination for that?—No, I got my certificate for services done in the district, and the length of time I have been connected with it, and for the same reason as a civil engineer gets his diploma as a member of the institution of civil engineers.

856. I wanted to know what the practical working of the thing was. Who is the judge of your competency in your own case?—The judge of the person's competency is this: that in the district there is an inspector, and when the passing of the Mining Act took place, he was supposed to know all the colliery viewers in the district, and to know whether they were fit for a certificate or not; many of them have got certificates for service, and since that time many of them have got certificates by passing an examination.

857. In your case you have not passed any examination, but got your certificate from the personal knowledge that the inspector had of you?—Yes.

858. What means, practically, has he of ascertaining your competency and fitness for your work?—The means that he has of ascertaining my competency and fitness is this; that a large firm places the whole of the thing in my hands, and I carry on the works. I may state that I was one of the persons recommended by the West Yorkshire Coal Association to the Secretary of State as a suitable person to be on the board of examiners. The managing director of the Bowling Works is one of the examiners. I suppose two were not wanted from one firm.

Mr. *Knowles.*

859. On the passing of the Mines Act, do you know any persons that did apply for certificates that were employed at the time as colliery managers, and were refused?—Yes, a many.

860. So that that shows that the inspector had some control, at all events, in advising the Home Secretary who to give certificates to?—Yes.

Mr. *Tennant.*

861. Why do you think that any alteration in the law would have a tendency to bring inferior workmen into the pits or the works?—Mining is a peculiar class of work, and there should be an inducement to the men to know that they have a responsibility upon them, so that we should have men practically acquainted with the business. I think the alteration in the end would work against the men.

862. But that would apply if the law was altered at all, to all trades?—Well, it will apply to all trades.

863. I do not quite see how, in mining alone, it would have the effect which you describe?—It will apply to all trades if a man, when he enters upon his employment, knows the nature and risk of the work; and the tendency of the alteration would

Mr. *Tennant*—continued.

would be to prevent provident habits amongst workmen.

864. That is rather a different thing from introducing an inferior class of workmen in mines, which is what you referred to?—I think it would have a tendency to bring in a class of men that were not accustomed to the particular branch of the trade.

865. Then with reference to the number of accidents that occur every year, do they arise principally from the carlessness of fellow work men?—I do not say they do. There are careless men amongst colliers the same as amongst all classes of workmen.

866. From what causes do the accidents arise?—In our district, principally from falls of roof. Sometimes a fall of roof will take place with a collier who has been a very careful man. I have known them come down when the best and most experienced men could not have found out any defect beforehand.

867. That would be from an absolutely unavoidable cause?—Yes, but after the roof has fallen there may be a different construction put upon it. Then we see what was the nature of it; we did not before it came down.

868. Do you think it would increase the liability of a master considerably if he were made responsible for the acts of his head manager; for instance, did many accidents happen through your negligence?—If there had I should not have been here. If the master is made liable it would lead to a deal of bad feeling and litigation.

Mr. *Bulwer*.

869. You have given the instance of a roof falling down, and occasioning an injury from a cause undiscoverable at the time, although you say you may be wise after the event. Do I understand you to think, supposing that case went to a jury and you sought to make the owner of the mine liable, in that case it might very easily be said, by people who were wise after the event, "Oh! if he had done this, or had done that, he could have prevented it," and then the jury would be very apt to mulct him in damages, for not having taken the precautions which we have learnt, after the event, it would be well to have taken?—Yes.

Mr. *Macdonald*.

870. Am I to understand you to have said that the tendency of more legislation would be to make men more reckless and careless?—I think the tendency of the proposed legislation would be that way.

871. Then, has the tendency of all the legislation that has been for the protection of workmen for the last 30 years led to the men becoming more reckless?—That legislation has not been of the same character as this.

872. How can you perceive that this will lead to recklessness?—I give you my opinion, as a practical man conversant with mines. I say that is my opinion.

873. You said that the men would not conduct themselves with the same propriety as they did now?—I did not use those words. I said that I thought it would tend to make more improvident habits amongst workmen.

874. Do the men employ themselves to you; do they force their employment upon you?—No, they do not do that.

Mr. *Macdonald*—continued.

875. Have you not the selection of the workmen?—Yes, we have the selection of the workmen.

876. Do you employ reckless men and men who are improvident?—Not if we can help it, not if we know it.

877. Would you do it if, in the future, such a thing were to occur as an alteration of the present law?—I say it would have a tendency with all men to make them more reckless and less provident.

878. I ask you, have you not the full command of the employment of men, and are you not, therefore, in a position to see that you have not reckless workmen?—Yes, we have full power to employ the men or not.

Chairman.

879. I understand you to say that you think that it would have a tendency to make the men reckless?—Yes.

Mr. *Knowles*.

880. If there was negligence by the manager, or by anybody else, and the men thought it was dangerous, there would be nothing to prevent their leaving, would there?—No; if a workman in a mine does not think the manager is qualified he need not stop.

881. He has the same liberty to leave as the employer has to engage him?—Yes.

Mr. *Ripley*.

882. You were asked whether the tendency of legislation for the protection of workmen during the last 30 years has had the effect of making men more reckless; has not that legislation, so far as you know it, been with the object of protecting the workman; but if legislation went in the direction of removing the responsibility from the workmen, would not that have the effect of causing a great amount of recklessness?—Yes. I say that up to the present time all mining Acts have been beneficial, and for increasing the safety of the men in every way.

Chairman.

883. Do you think that the master of a mine, who is also the manager of it, ought to be liable, or not, for accidents occasioned by negligence?—The case is rather different where a master is spending his own money to what it is where there is a manager who is spending some one else's money; and I should say that a man who takes upon himself to manage a mine, and spend his own money, ought to stand rather different from a man who employs some independent man to do it, and one that the Government of the country had acknowledged to be competent.

884. Ought he, or not, to be responsible for negligence in the case which I have put?—I think the case would be rather this, that he should be more responsible in that case than if he employed a manager to work for him. I think the case is different.

885. How does the difference affect the question?—In the first place he is spending his own money.

886. How does that bear upon the question?—When the master is manager, he might wish to save expense, and not carry on the works, with a due regard to safety of his workpeople; he

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Chairman—continued.

would be prepared to run greater risks than a paid manager.

887. That he could do if he was not spending his own money?—I take it to be this way: a case of negligence against a master may affect him but little; but a case against a paid manager might be utter ruin to him.

Mr. *Tennant.*

888. You mean that a master would not interfere with the mode of working of a man whom he employed as manager?—No, he would not, unless he wanted to get rid of his manager.

Mr. *Shaw Lefevre.*

889. It is his money that goes into the mine and works it, whether he works it himself or through a manager, is it not?—Yes; but another person has the control of it in the case where he employs a manager.

890. Now suppose that, instead of there being a single owner of a mine, there is a Company owning the mine who are obliged to employ agents and servants to do the work, why should not the company be responsible just as an owner who is himself manager of the mine?—They employ a manager and he conducts the work for them; he spends their money as he thinks fit and proper.

891. Do you not think the tendency rather is to induce the management of mines by servants and agents rather than that the owner himself should manage the mine; is not that the tendency of the present law?—No, I do not think that is the tendency. As far as my experience goes as to these owners who are also managers, it is talking very much about nothing; there are a few little collieries in Yorkshire managed in this way.

892. Is there not rather an inducement by the present state of the law for the owner not to manage a colliery himself, but to do it through

Mr. *Shaw-Lefevre*—continued.

an agent?—No, I do not think there is anything in that. The owners cannot manage a colliery, and have to appoint a manager.

893. An owner would become responsible if he managed it himself, whereas doing it through an agent he is not responsible. Do you not think that offers an inducement to him to abstain from the management?—I do not think it does.

894. Is it not the fact that there are very few owners that manage collieries themselves?—Very few. In Yorkshire there are a few coalowners that have been working colliers; they get a little pit and start a ginhorse, and become managers and masters; and very wretched concerns they often have.

Mr. *Tennant.*

895. As I understand it it is this, that there is not the same tendency upon the part of the certificated manager to save money in the working of the pit as there would be if it were his own money and in the case of the master who works his own pit?—Yes, that is what I say.

896. And therefore it is more likely that he would not be so very particular as to taking all those precautions in the one case as in the other?—I say the master acting as manager has not the same inducement as the paid manager to protect the safety of the men.

Mr. *Ripley.*

897. Would you limit that responsibility on the part of the small mine-owner who was manager to absolute proof being given that he had neglected the conducting of his works in some proper and reasonable way; would you in other words limit the increased responsibility which would be placed upon the man who was owner as well as manager to the necessity of proof being given that he neglected to spend his money reasonably and fairly for the protection of the men?—Yes, I would limit it to that.

Mr. JOHN KNOWLES, called in; and Examined.

Mr. *Knowles.*

Chairman.

898. WHAT is your employment?—I am one of the managing directors of Messrs. Andrew Knowles & Sons, Limited, colliery proprietors in Lancashire.

899. Are you a certificated manager?—No, I am not.

900. You have some statement, I believe, to make; will you make it?—We employ about 3,000 hands; and it is my opinion that the present laws respecting the liability of masters and servants is quite sufficient for all purposes, and that the Mines Regulation Act imposes such restrictions that the workmen are well cared for. The above Act is the result of the experience of the best managed mines in the country; and in no trade have such impositions and penalties been imposed as in the coal trade. The first thought a manager has in the control of a colliery, is the care of the men; and in doing this the works must be kept in order. Managers and all officers under them have full authority to do everything for the safety of the workmen. Workmen undertake their employment with the understanding that there is some risk attendant upon it; this is desirable to encourage mutual care. It is impossible for owners or managers to look

Chairman—continued.

after every man, and therefore there must be various officers for the departments. Workmen should be induced to contribute to relief and benefit societies, so as to create a kind of insurance. This is often done, and in many cases the owners contribute to them. Owners may be liable to a criminal or civil indictment for neglect of proper precautions. Managers and other workmen are also equally liable. If this Bill passes, there will be endless litigation. Owners of mines contribute very largely to the poor rates, and I have no doubt pay considerably more per man employed than any other trade, although there are relief societies which prevent the numerous applications to the poor law officers. The owners and managers of mines meet at various scientific institutions to discuss the means to be adopted for the safety of the workmen, and the good working of the collieries. I think workmen should do the same. Those are the salient points I have put down, and having heard the evidence of the other witnesses to-day, I concur in it to a great extent, especially with Mr. Smith and Mr. Hewlett.

901. Do you think the workmen contract that they shall not have any remedy against any one for

Chairman—continued.

for any injury that they may receive?—I consider that as they undertake the work under a common employment they ought to undertake the liability, one with the other.

902. Do you think that they are aware that that is the nature of the contract which they enter into?—They are perfectly aware of it.

903. How long have they been aware of it?—Ever since I have had a connection with collieries.

904. How long is that?—Perhaps 30 years.

Mr. *Shaw Lefevre.*

905. The workmen are aware of the law in point of fact; they know what the law is?—Yes.

906. And their contract is with reference to it?—It is a natural contract.

907. Supposing the law was altered, their contracts would equally have reference to the law?—They would have to go with it; but I say that it would prevent that amount of care that there is at present amongst the workpeople.

Mr. *Hopwood.*

908. What argument do you use in favour of the present law except that it protects the proprietor; what argument on any public ground?—It induces the workmen to look after one another.

909. Would it not induce the proprietor to look after the workmen more if he knew he was liable?—I do not think it would, because at present we have got a Mines Regulation Act which imposes regulations and penalties so strict that it compels the collieries to be managed in the best possible manner; and I think that the feeling and the desire of all managers of a colliery is to do the best for their workmen.

Mr. *Gibson.*

910. Do you think that if the law were changed it would tend to induce any carelessness or improvidence among the workmen?—I think it would; I think where there is a payment made by workpeople towards their own safety in the shape of insurance, it will make them more careful. One great evil that I think would arise would be that it would cause endless litigation, because there would be a difficulty in proving the liability in case of any accident that might have arisen, whether it was the workman's fault or his partner's fault, or any other man's fault.

Mr. *Eustace Smith.*

911. Then I understand you that it is your opinion that the present working of the Mines Regulation Act is so perfect that no alteration of the law would be likely to lead to increased care, or increased precautions on the part of the masters to avoid accidents?—I take the present Mines Regulation Act to be based and founded upon the improvements that have been made by the colliery managers and proprietors for some time previous, and that that Act has simply made it compulsory to carry out those regulations, and in some cases made neglect to do so penal. I am alluding now to well-managed collieries; those that are well-managed do their utmost for the safety of their workpeople that they possibly can, or that in human power lies, and they must entirely depend upon their officers, the men underneath the manager, to carry out these regulations.

912. I understand your opinion in regard to

Mr. *Eustace Smith*—continued.

well-managed collieries, but from your using those words I suppose you think that there are some collieries that are not well managed?—There must be various degrees of management of works, and the point is rather to get those that are not managed efficiently up to the standard of those that are.

913. Do not you think that the standard of management would rise in these collieries if the standard of liability on the part of the owners was raised also?—I think there is a sufficient liability at present in the penalties that are imposed by the Mines Regulation Act.

Sir *Daniel Gooch.*

914. Is there not a large penalty to the owners of mines in the injury that is done by an explosion?—Yes; it would naturally follow that the loss to a proprietor is sometimes very large indeed, and, naturally, looking after their own self-interest, that would be one point to induce them to take the best steps in the conduct of the colliery. But I look rather to the safety of the men at the beginning, and what ought to be done for that purpose.

Mr. *Macdonald.*

915. Does the Darcey Lever Colliery belong to you?—Yes, the Fogg's Pit.

916. How many bodies are lying there now that were killed?—10.

917. Are you making any effort to get them out?—Yes.

918. How were they killed?—That I am not able to answer at present.

919. By an explosion?—There was an explosion of some kind or other, which we do not know yet, and afterwards the smoke arising from a fire must have caused the death of some of them; we think so.

920. Does the first general rule of the Mines Regulation Act say that the ventilation shall be so strong as to dilute and render harmless the noxious gases?—Under ordinary circumstances.

921. Had the noxious gases been diluted in the Darcey Lever Mine, or the Fogg's Pit, is it likely that there would ever have been an explosion?—I think it is hardly fair to ask the question, because an inquest will no doubt be held upon it; it is a question that will arise at the inquest.

922. You have said that the workmen should exercise care and supervision over their fellow-workmen?—Yes.

923. You are a practical man and know how mines are managed; do the workmen employ their fellow-workmen?—They employ their own drawers.

924. I am asking as to their fellow-workmen, colliers?—They employ drawers, but they do not employ their fellow-workmen, not always; they do employ them sometimes.

Chairman.

925. Drawers are boys, are they not?—Yes.

Mr. *Macdonald.*

926. Does not the Mines Act assign to each individual workman his particular duty as a workman?—Yes.

927. Can a workman leave his working place to go into another workman's working place, to supervise and see whether he is carrying on his

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Mr. *Macdonald*—continued.

work properly?—No, but he can look after those workmen adjoining him, and working with him.

928. Do not the special rules under the Mines Act prohibit him from leaving his own place under any circumstances?—Yes, but I do not say he should.

929. Then how can he supervise or in any way interfere with his fellow-workman when the Act provides that, under a penalty of 2 *l.* or three calendar months' imprisonment, he must remain in his own place?—I did not say that he should look after other workmen's places, but he can look after the workmen working with him in his own place. I make that distinction, and that is the care that is required to a large extent.

930. Then if the employer employs a workman who is unskilled, and places him 300 yards from another, and that unskilled workman does an act which leads to an explosion which may destroy the whole mine, what power has that second workman over that man?—The workman himself should not do the injury.

931. You stated very clearly that the workman should supervise and watch; what powers has he?—So far as he can he should. A workman is not appointed to look after the whole of the colliery; there are proper officers appointed to do that, and the workman can only assist and supervise any workman that is working adjoining to him.

932. In his own place and there only?—Certainly; you cannot expect him to do more.

933. Then he has no power whatever over his fellow-workmen working in other places in the colliery?—I did not say that he had. I only said they should supervise so far as they can; and there are proper officers appointed at each colliery to see that the workmen do carry out the orders given them for the safety of the place.

Mr. *Tennant.*

934. Are there any collieries in your district where the owners work them themselves—where, in fact, they are their own certificated managers?—At the moment I do not know one; there are some near Rochdale but not in our immediate neighbourhood.

935. You say that you are a managing director of your coal company; I believe you are joint owner?—I am one of the proprietors.

936. Do you think it ought to make any difference in the responsibility if, instead of being managing director, you happened to be certificated manager?—No, I do not; but I treat it rather in this way; that if the owner of a colliery elects to become a manager he then has to have a certificate as a manager; he then takes the place of manager and all the responsibility with regard to the Mines Regulation Act which Parliament devolves upon him in the capacity of manager; the position of owner for the time being is put on one side.

937. Do you mean us to infer from that that you think the responsibility should be taken away from the master the moment he becomes a certificated manager?—He is then in this position that as the manager and as the owner I assume that he is liable, and supposing he does any act that is criminal he would be liable for, that as having ordered and given instructions for anything to be done in the same way as a manager himself is liable now for the criminal act.

Chairman.

938. But suppose he has committed a negligent act?—I think a negligent act may be defined in this way; one act may be a want of ordinary knowledge, and may be not really a negligent act, and the other may be a very negligent act. I think I should divide them into two; one may be from the want of a slight amount of knowledge; then in the one case he would not be liable, but in the other I think he would.

939. Which case would he be liable in; we are supposing the case of a master, who is also a certificated manager?—Yes; supposing that the engineer came to the manager, and that he was the owner also, and told him that a certain rope was bad, and that it was not fit to work with, and the manager said, "Now, you must go on working that rope," and it breaks and a man is injured I consider that, in that particular case, the manager would be really liable for the act he has done.

940. Are you speaking now of what is the law, or what you think ought to be the law?—I think that is the law now.

941. Now put the other case, if you please?—Supposing there was some doubt about some machinery, or the method of doing some work, and he orders it to be done, and it is not quite successful; there are cases of that kind, where we do not know of till afterwards that the wrong thing has been done.

942. You are putting a case where there is no blame at all; I meant a case of negligence; do you think that, in every case of negligence, he ought to be liable?—No, not in every case of negligence.

943. Every man is more or less negligent, I suppose, sometimes in his life?—Well, we are not all perfect.

944. Now, suppose that a master, who is also the manager, is guilty of an act of negligence of some kind or other from which injury ensued, do you think he ought to be liable?—If he has given an instruction that is wilfully negligent I think that he ought to be.

945. "Wilfully" and "negligent" are contradictions in terms, are they not?—I do not mean an ordinary negligence.

946. Ordinary negligence means negligence that he is constantly in the habit of committing, does it not; I want to know whether you think that the master who commits an act of negligence, who is also a manager, ought to be liable or not?—Yes, I think he ought.

947. He is also a certificated manager, by the supposition?—Yes.

948. But have not the Court held that a certificated manager is a fellow servant?—Yes.

949. Then, ought he not to be exempt as a follow servant?—No, not if he has taken the duties of master and of manager as well.

Mr. *Tennant.*

950. You think the law should remain as it is with regard to the master who is also a manager?—Yes.

951. Do you think that, practically, the masters' liabilities would be extended if they were made responsible for the acts of their certificated managers?—I am sure they would; and if you do it that way, then there is no reason why you should not go to every officer in the colliery.

952. Putting the case of the master who, instead

Mr. *Tennant*—continued.

instead of being his own certificated manager, employs a certificated manager in his place to do the work, do you think that then, practically, the master's liability would be greatly extended?—It would be very much extended indeed.

953. In practice, you think it would?—It would; and it is an unfair thing to make one person liable for another person's act.

Mr. *Macdonald.*

954. Following up the question of the honourable Member for Leeds, I will ask you this: Am I to infer from your answer that there would be an increase of responsibility on the employers; that the managers are now negligent; and that there would be an increase in damages?—Do you wish to know, by that question, whether there is negligence by the managers?

955. The honourable Member for Leeds put the question to you, "Whether there would be greater responsibility thrown upon the employers in virtue of the law being extended to the manager?" and you answered, "Yes"?—Yes, there would.

956. Then, are the Committee to infer that it is your opinion that the managers are now negligent?—No; I do not agree to that.

957. How do you explain that?—I allude to our own collieries, and I do not find them negligent.

958. Then how would your liabilities be thereby increased; your liabilities for accidents I refer to?—There would be an endeavour to test it every now and then in the Courts as to the cause from which the accident had arisen, and there would be constant litigation.

959. If it was proved that the managers were not negligent, do you think that it would increase litigation over what it is now?—But we do not want to have the trouble of proving it.

Chairman.

960. Is it not a very serious thing for a poor man to be maimed for life, and lose his occupation?—Yes.

961. And do you not think that it is worth the trouble of proving whether he is entitled to compensation for the accident or not?—I do not mean it in that way; but the effect would be this: that claims would be made, and endeavours to get money from the proprietor, in a great many cases, where there was no just cause whatever.

962. Then, if there was no cause, the man would not get the money, would he?—He would not get it.

Mr. *Bulwer.*

963. Is it your experience that plaintiffs who are not entitled to succeed never do succeed; take railway accidents, for instance; or do you think that if a poor man was injured down in a colliery and brought his action against the owner, the jury would be very apt to give damages against the owner, whether the plaintiff had any cause of action or not?—There is no doubt whatever that they would sympathise with the person who had had an accident; but my original idea of the scheme was, not that they should have no care taken of them if an accident did occur, but a provision in the shape of a relief fund or an insurance, and then, if an accident did occur, they would be relieved in that way.

964. You are aware that a managing director is now, under the existing state of the law, liable for his personal negligence by which a workman is injured?—Yes.

Mr. *Bulwer*—continued.

965. Just in the same way as one workman is liable to another workman, if he injured him?—Yes.

966. And you do not wish, as I understand, to make the owner liable for the negligence of the managing director?—Just so.

967. You say that you are a managing director but not a certificated manager?—No, I am not. Of course I could have a certificate if I wanted it. I mean by having served my time.

968. But what are your duties as distinct from those of a certificated manager?—The certificated manager has the daily supervision of all the works under him, and I have the guidance of the managers.

969. You manage the concern generally?—Yes.

970. But would you have any authority to interfere with a certificated manager, or to countermand his orders?—Not at all. I direct generally what he has to do, and he has to carry out those directions in the general conduct of the concern, but as regards the actual working out of the directions, he is the man who takes the responsibility, and through him, all the orders are given.

971. You are a managing director and a part owner, or interested in the collieries?—Yes.

972. You, I understand, take some personal supervision upon yourself?—Only through the managers.

973. Through the certificated managers?—Yes.

974. Do I understand that you give general directions, and leave it to them to carry your directions out in some specific manner that they know best?—Yes.

975. You do not interfere with their orders?—No, I do not.

Mr. *Tennant.*

976. Do you allow them entirely their own discretion as to what they will do for the safety of the men in the mine?—We give them full control.

Mr. *Hopwood.*

977. You are responsible for giving them the means which they think necessary for supplying good machinery and wood to prop up the roofs, and anything of that sort?—Yes.

978. The management undertakes that, and then the certificated managers act in carrying out the details of the work in regard to the mines?—Yes.

979. And they are certificated under the Mines Act?—Yes.

980. Do you yourself consider a certificated manager a fellow-servant of a man who works below him in the mine?—Yes, I think they may be all treated alike.

981. That is because the law has said so, so far; but do you yourself think that it is defensible as a matter of fairness?—Yes, I think it is fair, because they all join in one common occupation.

982. With regard to a certificated manager, what, may I ask, would be his salary or emoluments?—They vary.

983. Just give us an instance; a viewer in

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Mr. *Hopwood*—continued

one of your large pits, for instance?—From 150 *l.* to 300 *l.* a-year, perhaps.

984. Then there are under them, are there not, underground viewers and delegates, and so on?—Yes, under them there are underlookers, and under them again firemen, and so on.

985. Now each one of those classes is charged with some power of direction over the men in their work, or in the distribution of the men themselves in the places they work in?—Each one has the full control of his own particular department.

986. But the ordinary common collier has nothing to say to those departments?—He is guided by them where he is to work and what he is to do.

987. He is directed by them?—Yes.

988. Commanded?—I do not use that word quite.

989. It is not an English word for workmen perhaps, but directed is sufficient for my purpose?—I would say that he is guided and directed.

Mr. *Macdonald.*

990. You have had other accidents or disasters to mines, where serious loss of life has occurred?—There have been occasions where lives have been lost.

991. But you have had others of late, where there has been a serious loss of life, have you not?—I do not know what you allude to.

Mr. *Knowles.*

992. You have been asked about what the men had no power to do under the Mines Act, but have they not power to depute two of their fellow-workmen under the Mines Regulation Act to examine the mine?—Yes.

993. If they suspect it to be dangerous, or if they want to examine it to see that it is really safe, they have power to depute two of their own men to do it?—Yes.

Mr. *Wrigley.*

994. May I ask whether they carried that out?—We have never had a case yet.

Mr. William Firth, called in; and Examined.

Chairman.

Mr. *Firth.*

995. What is your employment?—I am Chairman of the West Yorkshire Iron and Coal Company, in the neighbourhood of Leeds.

996. You are aware of the purpose for which this Committee is appointed, to inquire as to the liability of masters for negligence in industrial undertakings; what is your opinion on that subject?—My impression is that the law as it stands now is the best that can be had for the general interest of the trade of the country.

997. And the working people themselves?—And the working people themselves.

998. Will you say why you think so?—I consider that the last Act was rather a compromise between the masters and the men. The masters had a long time opposed the principles which were embodied in the Act of 1872. It was passed, I think, generally against the wishes of the mine owners, but it has been accepted and worked out, I believe, faithfully and fairly, and I think that it is not desirable to be disturbing the law between master and servant more frequently than is absolutely necessary.

999. The subject which this Committee has got to consider is not that Act, but the liability of masters independent of that Act?—Just so; and, as I understand it, growing rather out it.

1000. I think not?—Then it is whether the liability should be extended, or not. I quite understand that.

1001. And you say you think that it ought not to be extended?—I think it ought not to be disturbed at present, because I think the working man has all reasonable protection at the present time, and the owner has as much to do as he can fairly bear. I believe he works out the objects of the last Act as fairly as he can do as a rule.

Mr. *Tennant.*

1002. You are referring to the Mines Act, not to the Masters and Servants Act?—I am referring to the last Act of 1872; the Mines Regulation Act.

Chairman.

1003. But the subject which this Committee is to inquire into is not that Act, but the liability outside of that Act altogether?—I understand the proposal is to extend the liability of the owners beyond what is done by that Act, and beyond what is done by the common law.

1004. The question is with reference to the liability outside that Act altogether?—My impression is, that the law as it exists now is quite sufficient for all reasonable purposes, and that it is not desirable to extend it.

1005. Does the law provide, as it now stands, any compensation for the workmen in the case of injury?—If there is neglect on the part of the manager the workman has a remedy, if a jury will decide that there is negligence.

1006. Is that so?—I understand that to be the law of it; he has a common law remedy against his employer.

Mr. *Attorney General.*

1007. Do you mean that if a servant is injured by the negligence of a manager of a works, or of a mine, that servant can claim compensation against his master; is that your view of the law?—I think where there is negligence, where there is really default.

1008. Of the manager?—Of the manager; that the jury would give him the benefit.

1009. That is your view of the law?—That is my view of the law as it is now. I am not quite clear whether the law is worked out in that shape; that is my opinion of what it is and what it ought to be.

1010. You think that a jury would give a workman compensation for injuries he had received from the negligence of the manager?—From proven negligence.

1011. That you think is a good and wholesome law?—I think so.

1012. Is it your view that the master should be liable for injuries inflicted on the servant owing to the negligence of his manager?—Yes; I think that

Mr. *Attorney General*—continued.

that where clear negligence is proven the master is made liable by the act of his certificated manager.

1013. You have had to do with mines, have you not?—I am the chairman of an iron and coal company, and I am a shareholder in other mines.

1014. You are a shareholder in some large iron and coal mine companies?—Yes.

1015. Suppose a servant or a workman, a collier, a man employed in the mine, is injured owing to the negligence of a fellow-workman, a man employed in the same gang with him, do you think the master, the employer, should, or should not, be made liable for the damage sustained by the servant in that case?—I think that it would be wrong to make a master liable for the negligence of a fellow-workman which should damage his fellow-workman.

1016. Do you think that one workman has as much or more control over the actions of his fellow-workmen than the master has?—Yes, I think so; as a rule decidedly so.

1017. And if that be so, you think it would be wrong to make the master responsible for any damage done to him?—I do.

Chairman.

1018. I believe you have a statement which you wish to read?—Yes; I reside at Leeds, and am chairman, as I have told you, of an iron and coal company. I have been connected with coal mining for about 20 years, and I have taken great interest in the subject. I have paid a good deal of attention to the question of accidents in coal getting, and have spent much time and money in making machinery for the purpose of diminishing the risks which are incidental to coal mining. I refer more particularly to machinery for undercutting the coal, so that the labour of hand-getting might be nearly dispensed with. I have succeeded mechanically, but the commercial success has been interfered with, mainly through, as I believe, the men having been led to consider the machine as opposed to their interest. I worked the machine in our colliery for 10 years, and there was only one serious accident, so far as I am aware, to any of the men who attended the machine during that whole time.

1019. What is the power by which you work it?—Compressed air; and that accident happened to a poor man who neglected to set up a prop which he had been told to do, and the roof came down and he was killed. One great purpose of the machine is to reduce the danger which comes from falls of roof and coal, so numerous and fatal in hand-getting, and to ease the labour of hewing. The accidents from falls of roof and coal amount to about 40 per cent. of the total accidents of the coal mining. The action of the miners' union has been the greatest difficulty that I have had to contend with, and although, commercially speaking, my work has been baffled, I feel perfectly confident that in spite of them it will ultimately prevail. My attention has been drawn to the Bill now before Parliament, and I am of opinion that the law as it now stands goes quite far enough, and ought not to be carried further against the colliery owner; that on public grounds there are strong reasons for letting it alone, especially as the men have, in my opinion, all reasonable security, so far as the owner can give it, and the nature of the business can justly

Chairman—continued.

Mr. *Firth.*

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be expected to provide, and that the colliery proprietor can carry no greater load without consequences following which, in my opinion, may be fraught with great injury to the national interests. At the present time a workman may do an act contrary to the rules laid down for the working of the colliery, which may cause a great destruction of property, as well as of life, and there is no practical remedy against the culpable person other than criminal recourse, and I think that if that person were a member of the miners' union, and has paid money towards the accumulation of a union fund, the union fund ought properly to be made answerable for the injury and damage done by the culpable member of the union, and that the law should be altered to that extent. I do not believe it possible to provide absolute means of security against some kinds of accident, and an employer cannot, whatever he may do, avert them all. There are sudden outbursts of gas which for a time vanquish the best made provisions for ventilation, and no foresight can reasonably anticipate or provide an absolute and instantaneous mastery over it; and I consider that it would, under such circumstances, be as unjust to make the owner responsible as it would to make the farmer responsible for the life of his man at the plough, who may lose his life through the electric current; and yet those who seek this alteration of the law desire by it to make the employer answerable by compensation. I do not consider that the present law is quite fair towards the smaller class of proprietors, whose works are not extensive enough, or who cannot afford to employ a certificated manager; and in my opinion the anomaly of making that class of persons liable for compensation when larger pits, managed by certificated managers are exempt, is a wrong which ought to be remedied. But if the anomaly should be removed by bringing into liability the mines that are managed by certificated managers, then it would be the height of injustice to allow the union to draw their large funds out of the working of the collieries, won through the enterprise and capital of the mineowners, and that they should be held free from any legal responsibility for the damage done by the contributors to those large accumulations. I am aware that it is contended that the owner of the mine alone is interested beneficially in the working of a coal mine. And that he, having all the profit, ought to bear all the financial responsibility attendant upon the winning and working of the produce. But this doctrine appears to me to be quite untenable, for first: the owner of the estate is benefited largely by a preference charge, in the shape of a royalty; secondly, the wages of a workman is a preference charge, and payable whether the colliery is worked at a profit or a loss. In this charge the shopkeepers, tradesmen, and tenant farmers in the neighbourhood are all interested, and especially the publicans; thirdly, the rate collector has also a preferential charge; and fourthly, the owner takes what the others have left, so that if there is no profit, he gets nothing, whereas if there is a loss he alone has to bear it. There are very few collieries at the present time that can be carried on profitably, even as the law stands now, and the proposed alteration must make a worse state of things for the colliery proprietors. It is quite impracticable for managers to obtain characters of fitness for every man who applies for work, for,

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as a rule, they are a very restless and shifting body of men. They change situations, on an average, about every seven or eight months, and they do not carry with them testimonials of character. But on the other hand, it is easy for men who are seeking employment, to ascertain the character of any pit, and likewise the qualifications of the manager, and no man need enter the service unless his inquiries be satisfactory. And as this is the case, I can see no sufficient reason why a man should acquire from the owner a guarantee of his own personal safety, among all the contingencies incidental to the risky nature of his calling, including undiscoverable failures in machinery, overwhelming falls of roof and coal, or explosions which may have happened through the culpable acts of himself or his fellow-workmen, or from cases of the mental abstraction of anyone in the mine, and totally beyond the control of the owner. If the law be altered, as proposed, the effect would be, I believe, to diminish the personal caution of the workmen in some degree in performing their ordinary and unquestionably risky occupation; and I think that would be an evil which would show itself through an increased number of accidents; and the owners, it is suggested, are to be saddled with all the consequences of all the accidents. Under such circumstances I do not see how any prudent man of capital dare remain in the business, and none would be speculative enough to enter into it, without some general union of mineowners could be brought about, and perhaps such a union might be formed for the following purposes: First, to insure against accidents; secondly, to resist the action of the miners' union; and, thirdly, to regulate the selling price of coal to the public. I do not think that the permanent interests of the country at large would be promoted by such a combination; nor do I think that the condition of the working men would be improved by such a change.

Mr. *Walter Stanhope.*

1020. You mentioned the destruction of property; to what destruction of property does that refer?—An explosion. I have known an explosion damage a colliery, to such an extent as to cause a loss of 40,000*l.* or 50,000*l.*

1021. Through the destruction of the property of the mine?—Of the mineowners.

1022. If that explosion was caused by a wilful or careless act, that property would be to that extent at the mercy of the person performing that act?—Yes.

1023. And your argument, I think, was, that if that person was an ordinary miner, the owners of that property would receive no redress from him?—Practically there is no redress. I have never known it attempted.

1024. And therefore that valuable property is at the risk of the carelessness or misconduct of these men, to a certain extent?—That is my opinion.

Mr. *Bulwer.*

1025. I am afraid I do not understand you at all. I understood from your statement which you have just read, that you think that the law goes quite far enough; that is your view?—It is.

1026. Then I understood you to answer the Attorney General before you read your statement that, in your judgment, the owner of a colliery ought to be liable if negligence on the part of his mine manager is proved?—Culpable mismanagement, neglect.

Mr. *Bulwer*—continued.

1027. Of the mine manager?—Of the mine manager.

1028. And you, I understand, are the chairman of a coal mining company?—Yes, and that is my impression of what the intent of the law ought to be.

1029. I want clearly to understand your views. You are the chairman of a coal mining company, and you are obliged to employ a certificated manager?—Yes.

1030. You are of opinion, that you and your company ought to be liable for the negligence of your certificated manager?—I do think so, where culpable neglect, clear neglect can be proved against him; as chairman of the company I should not object to that bearing of the law.

1031. Of course I am confining my questions, you will understand, to the matter now before the Committee, namely, the liability for injuries sustained by one workman through the negligence of a fellow-workman; are you aware that the law now considers that the certificated manager is a fellow-workman with the men down at the bottom of the mine?—I am, and to that extent, I do not object to the alteration of the law; but I couple with that that there should be some recourse against the union if it is done by a member of the union, whose fund is so largely drawn from the mines.

1032. Which union?—The miners' union.

1033. To that extent you modify the statement you read from your paper, that the law now goes quite far enough; that would be going a little further?—It would be going a trifle further. What I am afraid of is the impossibility of watching every man in the mine. No management with which I am acquainted can be at the side of every workman down in the dark working-place in the coal.

1034. You would say that although you ought to be liable for the negligence of your certificated manager, you ought not to be liable for an injury occasioned by the negligence of a man working down in the bottom of the mine, whereby a fellow-workman is injured?—Certainly not. What I meant was this, as mentioned by a previous witness; if, for instance, a strand of a rope was seen to be gone, and the manager's attention had been called to that, and he continued to use it, I think his employer ought to be liable.

1035. Supposing another case, that an explosion took place in a mine where, perhaps, a hundred lives were lost, and that was occasioned through negligence, want of proper ventilation, and it was the duty of the certificated manager to see to that proper ventilation of the mine; supposing such a catastrophe as that occurred, would you think that you ought to be made to pay compensation to the families of all those working people, owing to the negligence, I will assume, of the certificated manager?—The culpable negligence of the manager, even in respect to that, might, I think, justly attach to the proprietors, if we were given recourse to the union fund, when culpable damage is caused by a member of the union.

Mr. *Hopwood.*

1036. I suppose explosions, or falls of roof, may be the result of accident, without anybody's negligence?

Mr. *Hopwood*—continued.

ligence?—The roof may come down without a moment's warning, and the men are crushed.

1037. And so with explosions, they may arise from a sudden rush of gas that no one can foresee, which may explode against a light not negligently brought there?—Certainly.

1038. And then with regard to all such accidents, I presume you would say that the law ought to make no one liable; you would put them on the footing of the electric fluid descending from the heavens on the ploughman, in the case you put?—In such a case as an outburst of gas, it sometimes comes with a force so tremendous as to lift the floor, stones six feet long and several feet wide, and no human foresight that I am aware of can provide against that.

1039. You would require that it should be proved to be the result of negligence?—Yes, I should require clear proof of negligence.

1040. Then I understand you to protest against making the masters liable for the acts of individual servants among themselves?—I do.

1041. But you reject the notion that a certificated manager is a servant in relation to the colliers there below in the depth of the mine?—It is held so. I think that responsibility attaches to the first representative of the mineowner.

1042. I understand you to think that the last Act was a compromise as regards mining property, and the law upon this subject of employers and workmen?—I consider it so.

1043. Then without that Act you think there would have been some injustice in the law?—I consider that law worked an injustice upon the mineowner; a very considerable one.

1044. In what way was it a compromise?—When I say a compromise I mean that the law has been accepted generally by the coal proprietors and adopted, and they have done their utmost to carry it out, although in certain cases it is a very hard law against them.

1045. Now, I understand you to have addressed your attention to the perfection of machinery with a view to avoid accidents?—To avoid accidents as far as possible, so far as human endeavours can do it.

1046. Do you find those machines adopted by owners; I understand you to say that the men have offered some opposition, but do you find them adopted by owners?—They have been adopted by owners; but I must admit that commercially it is not an advantage to an owner at present to do it, for the reasons which I named, that the men put restrictions upon the work that the machine shall be permitted to do; and, instead of a machine cutting 70 or 80 yards in a day, they will not allow them to cut more than 35 yards a day; that, commercially, makes a great difference.

1047. Right or wrong, they do that upon some idea of their own interest?—They think that machinery is an enemy to their welfare. Coal-cutting machinery is disliked by the bulk of the men; and, as the machines have to be guided and managed by the men, and in the dark where we cannot always be watching them, the moment that the manager's back is turned they idle their time away. It is the restriction which they impose upon machinery that does it.

1048. At all events, you take an employer's view, that they do not do as much as they might do?—Certainly, I do; they do not do half as much as they might do in that respect.

Mr. *Hopwood*—continued.

1049. And they have their own opinion about that?—Certainly.

1050. I was going to ask you about your notion of making the unions liable, because a man who subscribed to them was culpable?—For the damage done by the individual.

1051. Would you extend that to your own company; if any one of your shareholders was guilty of negligence which caused damage to another?—I do not quite catch your meaning.

1052. I will bring it nearer home if I can; suppose any of your underground receivers possessed two or three shares in your company, and was guilty of negligence, would you make the whole company liable for the damage done by his negligence?—No; as there is no accumulation fund in hand to meet it.

Mr. *Ripley.*

1053. Am I to understand that you consider all the men employed in a colliery, with the exception of the certificated manager, as being in one common employment, and therefore that they should not be liable to the owner, but liable to each other for accidents which should happen through them?—I should take the certificated manager out of the category on the conditions explained.

1054. That, with the exception of the certificated manager, all the men employed in the pit are in one common employment, and, therefore, any accident that should happen the owner of the pit should not be liable for?—Quite so.

1055. Therefore, in the event of an accident, the working men have had no remedy against him?—Yes.

1056. In the case of a certificated manager, having first gained a certificate and having been selected carefully by the owner, proceeding to manage these works, and doing something directly contrary to the orders of the employer, or what the owner believed he was doing, which caused great damage to the workpeople, do you think that the owner ought to be liable for the injury caused by his neglect?—I am just at that point of the line; the certificated manager represents the master, and the master of a small colliery is made liable; and I think that the representative of the master, who has full control of everything, if he falls into gross negligence, involves his employer in the risk.

Mr. *Eustace Smith.*

1057. I suppose all these men in your collieries are paid by the amount of the coal they send to bank, are they not?—No; we have a large number of men who are paid by the day.

1058. As to these men who are working this coal-cutting machine, are they paid by the day?—By the yard cut.

1059. And they only cut 35 yards, when they might cut 70 or 80, you say?—Yes.

1060. I suppose the coal trade is rather dull just now with you, is it not?—Yes, we are rather dull.

1061. Are the men getting as full employment as they did two or three years ago?—Our men are in full employment; that is to say, there is no restriction on the day by us, but they do not average more than about 32 hours a week when left as they are now; that is the present average.

1062. Then you have had no opportunity of

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Mr. *Eustace Smith*—continued.

trying whether you could do more with this coal-cutting machine in bad times than in good; I mean whether the men would take to it more kindly?—The men are nearly all in the union, and they act with the union, and the result of it has been that what used to be 65 and 70 yards a day has, very recently, come down to 35 in the same seam; and this, I believe, is by orders from the union.

1063. And that you attribute entirely to the repugnance of the men to use machinery?—I do.

Mr. *Macdonald.*

1064. I understand that you stated, in answer to a question from the Attorney General, that a fellow workman had more control over the actions of his fellow workmen than the employer; you say you know the management of collieries; is that correct?—I have been studying it for 20 years.

1065. Can you tell me in what respect a common working collier or coal getter can in any way control the action of his fellow workmen?—He can light his pipe, as we have frequently caught them doing; he can leave traps opened; he can leave the brattices down; all these have happened in my own experience.

1066. Cannot the manager you employ leave the gas undiluted?—He could.

1067. Cannot the underlooker whom you employ leave the roof unsafe for travelling in?—Yes, an abstraction of mind might cause him to do it.

1068. Cannot he do that?—He could do it if he purposed, but he is a fellow labourer, an underman.

1069. Cannot a pithead man carelessly attend to the rope, and thereby endanger the lives of his fellow-workmen?—Yes, he could; the engine man might over-wind.

1070. So that these "cans" equally apply to those that are in management as to those that are engaged in working?—I understood your question to be whether a common workman had more control over the accidents in a pit than the manager himself, and I say that, as a rule, he has.

1071. Can a manager so have the mine that the mine explodes and kills the whole of the men therein?—I do not know how he could do it.

1072. Are you aware that in the case of the Edmunds Main Mine accident, near Barnsley, in 1859, the jury found that the accident was traced to the action of the managing partner?—I was not aware of that. Was that at a coroner's inquest?

1073. Yes?—I was not aware of that.

1074. I advise you to study the Report; you said that you would have the workman to pay for accidents out of the funds of his union?—If he has contributed to it, I would.

1075. Have the mineowners, in their unions, funds?—That I do not know.

1076. Is it one of the fundamental rules of the mineowners' unions to have funds?—I do not know.

1077. You are not in a mineowners' union, then?—No, I am not.

1078. If the mineowners had a union would you think it right to compel them to pay out of their funds for the mistake or wilful neglect of any member of their union?—If they had, and if they were contributory parties to an accident,

Mr. *Macdonald*—continued.

I should; if one of the partners of the mineowners' funds creates an accident I think it is but right; it is a partnership fund, and it ought to be open to make good the damage which the partner has created.

1079. If the workman of another colliery contributes to a fund you would have him pay for the deed done by a workman in an adjoining colliery?—It requires a little explanation. The miners' union has become so powerful that they deal directly with us; they step over the heads, really, of the men, and in their own names communicate and make terms with us, and they do interfere very much with the management of the colliery where the men are members of their union.

1080. Is not every man under the control of or subject to the special rules of every colliery in all his conduct, which the miners' union have nothing to do with?—Under the special control within the law; no doubt they are restrained by the law, but that was no part of my reference.

Mr. *Tennant.*

1081. Did I rightly understand you to say that you would make the law the same in a colliery where the master was his own manager, as in a colliery where he employed a certificated manager?—I have come to that conclusion.

1082. But in practice, taking your own colliery for instance as an example, have you found that any amount of accidents are in fact directly attributable to the culpable neglect of the colliery manager?—We have never yet had one case where it has been proven that the manager has been the cause of an accident.

1083. Then you, in point of fact, do not think that it will practically extend the liability of the coalowner to any appreciable extent?—No, I do not.

1084. You have been asked by Mr. Macdonald as to whether you would make the funds of a mineowners' association liable in the event of accidents; but the mineowner, I suppose, as a rule can pay?—The mineowner generally has property, and you have something to go against.

1085. But supposing the mineowners had not property, supposing there was an association having similar objects to the miners' union, then you would think that the funds of the mineowners' association might be come upon to make good any deficiency?—If the mineowner's association were directly to interfere in the working of a colliery where such a thing happened, I would make them liable.

1086. You would apply the same law to both?—Certainly.

Mr. *Knowles.*

1087. You say you would make the certificated manager responsible for an injury to a workman if it occurred through the manager's neglect?—Yes, if he were culpable for the act.

1088. Supposing he omitted to do something through want of forethought or neglect which caused an accident, would you then make him liable?—Omissions we cannot always call culpable, because they may be from a variety of causes. The man may be in a state of abstraction of mind, and he may not know what he is doing; we know many cases where men do things, and they really do not know what they are doing.

1089. We

Mr. *Knowles*—continued.

1089. We will suppose the case of an accident in a colliery occurring, let it be large or small, and maiming or killing a lot of workpeople, and that everybody connected with it can see that if some particular thing had been done it might have been avoided?—After it is done perhaps they may see that.

1090. If such a Bill as is proposed was to pass and become law, what would there be to prevent any of the workmen saying, "This ought to have been done by the manager; he ought to have given orders for it to have been done, because if some little thing had been done it would have prevented the accident?"—That might be said, no doubt.

1091. That would be one reason why there would be a constant litigation, I suppose?—Yes; I should be afraid of constant litigation, and therefore that fear of litigation would lead me to hope that a combination amongst the mine-owners, if that Bill were to pass, would be universal with reference to an insurance fund, and once the mineowners compactly united and combined together for that purpose, their purposes, in my opinion, will extend far beyond that.

1092. Have you ever known a case where a mineowner has been sued by a workman for damages?—No, I have not.

1093. Have you ever read of any?—No.

Mr. *Knowles*—continued.

1094. But we will suppose a case where a master is sued by a workman, and the jury should find for the defendant with costs; how is the master to get his costs; from whom?—He cannot get them unless the alteration I have suggested could be brought about, that the fund which the man is interested in, and is a partner in, could be got at.

Mr. *Hopwood.*

1095. Do you know how anybody would get his costs if he is sued by a poor man, and the verdict is in favour of him, the defendant?—He has to pocket the loss.

Mr. *Knowles.*

1096. But assume that they give the verdict the other way, against the colliery-owner, with costs, would he not have to pay the costs of the plaintiff?—Certainly; it does not act on both sides equally.

Mr. *Hopwood.*

1097. Do you know also that the law makes provisions for actions by plaintiffs who cannot pay, in many cases, that they must go into the county court?—They would hardly be county court cases that have been contemplated this morning, as a rule; they would be something far beyond that.

Mr. *Firth.*

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Friday, 4th May 1877.

MEMBERS PRESENT:

Sir Daniel Gooch.	Mr. Macdonald.
Mr. Hopwood.	Mr. Eustace Smith.
Mr. Knowles.	Mr. Walter Stanhope.
Mr. Lowe.	Mr. Tennant.

THE RIGHT HONOURABLE ROBERT LOWE, IN THE CHAIR.

The Right Honourable Sir GEORGE W. W. BRAMWELL (Lord Justice of Appeal); called in; and Examined.

Right Hon. *Sir George W. W. Bramwell.*

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Chairman.

1098. YOU are aware of the nature of the inquiry that is committed to this Committee?—I think so.

1099. Is there any information that you would give us from your experience, to assist us in coming to any conclusion; you are aware that we are inquiring into two subjects?—I should be very glad to be of any use to the Committee. I think it is a very important subject. I could not give the Committee much information upon any matter of fact; I have no statistics; but I have had a good many cases before me in my time, and I have thought a good deal on the subject.

1100. May I ask you first if you could tell us, in a few words, exactly what you take the law to be on the subject at this moment?—I should be glad to do so. I know there are a good many Members of the Committee who know, very likely all of them know, what the law is, or pretty nearly so; but still I should like shortly to express what I understand to be the law, more especially as I have seen a copy of the Bill, and it seems to me that whoever drew it had a notion that there was a sort of natural law, a general right, or what I may call a right in the nature of things, for people to maintain actions against masters in respect of the negligence of their servants. Now I think that is an erroneous notion. It seems to have been considered that the exception that exists in the law that a man may not maintain an action against a master for the negligence of his fellow servant was an anomaly, an unreasonable exception. I do not see that at all. I do not agree with the notion that seems to be entertained, that the right of action against the master for the negligence of his servant is a sort of natural right to which there is this anomalous exception. A man is liable for the negligence of his servants under two different sets of circumstances; one, where there is no relation between the master and the party complaining; and the other, where there is. I will give a familiar illustration of both. If a man's cart or carriage is driven, by the negligence of his servant, against anybody in the street, that is an instance of one class of cases where an action lies. On the other hand, if a man undertakes to carry a person, either in a stage coach or on a railway, or what not, and the servant employed

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to fulfil the contract is guilty of negligence, that is an instance of the other class of cases. In the former there is no relation between the person injured and the master; the person injured stands upon his rights as one of the public. In the latter case there is such a relation. Now, for my own part, I have never been able to see why the first class of cases exists; why the law should be so, why a man should be liable for the negligence of his servant, there being no relation constituted between him and the party complaining. It cannot be because he puts the means of doing a mischief into the servant's hands, for if the servant does the act wilfully the master is not liable. I am liable for the negligent driving of my carman or coachman; I am not liable for his wilful doing of a mischief with my cart or carriage. And it cannot be because he is doing something on my behalf. I may give an obvious illustration of that. If I say to a man, "Here are bricks and mortar, and I want a wall built, and I will pay your wages, and you shall build the wall at so much a day wages," he is my servant; and if in the course of that building he injured anybody by his negligence, I am liable. But if I say to him, "Now, there are the bricks, and there is the mortar; I make a contract with you that you shall build that wall for 20 *l.*," I am not liable. It cannot be, therefore, because it is my work that is being done. The only reason I have ever heard suggested for the existence of the liability, is one which would hardly seem applicable now. I have heard it suggested that it is derived from the old Roman law, which made a man liable for the act of his slave, pretty much in the same way as a man is liable now for the act of his horse, or his cow, or cattle, if they go astray. That is, I venture to think, a very inadequate reason. To my mind, the distinction of the cases where a man is, and where he is not, liable for the negligence of another person, may be defined in this way. If there is a contract between them, so that the person doing the work, or doing the act complained of, has a right to say to the employer, "I will agree to do it, but I shall do it after my own fashion; I shall begin the wall at this end, and not at the other;" there the relation of master and servant does not exist, and the employer

Chairman—continued.

employer is not liable. But if the employer has a right to say to the person employed, "You shall do it in this way, that is to say, not only shall you do it by virtue of your agreement with me, but you shall do it as I direct you to do it; there the law of master and servant applies, and the master is responsible; and I really cannot see the reasonableness of making the master liable in such cases. There is one ground on which it may be, to some extent, justified, which is this, that it ensures, or at least, tends to ensure the master making choice of a properly skilful and careful servant. And yet, oddly enough, if that were the reason, one would think he ought to be liable in the case of wilful misconduct, on the ground that he should have an inducement for selecting, not merely a careful and skilful, but a well-conducted and well-behaved person; but yet, in that case, he is not liable. I just wanted to make that remark about that head of the law; but it does not seem to me that the question before the Committee comes under that head.

1101. May I ask you whether your opinion then would be, that the whole of the law by which persons obtain damages against railway companies is founded on an unsound principle?—No; I think that comes under the second head; there is a relation established between the parties there, between the passenger and the persons carrying.

1102. You would call it a contract?—Yes, I think, as I have said, it comes under the second head. I have mentioned the first head, where there is no contract whatever; the man stands on his right. "I was a passenger in the street, had a right to be unmolested and uninjured by the negligence of your servant, and I have been injured by it, and call on you to indemnify me."

1103. Before you go to the second part, may I put a question to you: we have been told that there is no trace of this law at all until a decision of Chief Justice Holt's; do you know whether that is so or not?—I never heard it before. I am not able to give you the least notion whether it is so or not. I really am almost ashamed to be obliged to acknowledge an entire ignorance upon it, but I never heard the thing suggested before. It is so thoroughly established now, that one has not had occasion to inquire into that. I think the Bill before the Committee does not come under that head. As to whether a master should be liable for the negligence of a servant to a fellow servant, that comes under the second head of cases; that is to say, that class of cases where a relation has been established between the parties. Now the expression that is used is, I think, an unfortunate one, that is to say, that a servant contracts that he will make no claim against the master for injury done by the negligence of a fellow servant. The obvious difficulty in the way of that mode of expressing it is, that neither master nor servant ever think of such a matter when they enter into the relation of master and servant. But I think, if put in another way, it would be reasonable enough, that is to say, they establish a relation between them, of which one of the terms is not, that the master shall be liable for the negligence of a fellow servant. And I imagine what the Committee have got to consider is, whether it is desirable to alter that state of things. Now, if I might be allowed to say so, it seems to me that the burden of proof is upon those who would make the change; and in my humble judgment, there not only is no reason

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why it should be made, but there are a good many reasons why it should not.

1104. Before you go to the reasons, I should like to ask you a few questions about the law itself. In the first place, how did this law arise, how did it come into existence; it is a new creation, is it not?—It is new, that is to say, it is about 30 or 40 years old; it is new, not in the sense of being anything different from what previously existed, but I think the first case upon it is about 30 or 40 years ago, and it has been established since. I cannot say it is new in the sense of being different from what previously existed, but it is new in this sense, that I do not know that there is any reported case, or trace of it, earlier than the case I mentioned.

1105. The case of Priestley and Fowler?—Priestley and Fowler was the first case, I think.

1106. That case did not go to any such length, did it, as has been subsequently gone to?—I think it did.

1107. Was not the decision there merely that a butcher was not bound to warrant his van; the Court held that he was not liable for the breaking down of his van?—The case of Priestley and Fowler is, of course, thoroughly well known to me by name, as the first of these cases, but I could not tell the Committee at the present moment the details of it.

1108. Then it was later still before we ever heard of this question of common employment, was it not; the doctrine of common employment has not been established a great many years, has it?—No, I think not; that is to say it is within the present century undoubtedly, in the last 30 or 40 years.

1109. The decisions did not arrive at their full extent at once, did they; they gradually increased and got more and more sweeping as the cases arose?—I really do not think so; that is not my view of them.

1110. The decisions have come to this, have they not, now, that a master is not liable at all to his servant for negligence in any case, except for his own negligence?—Yes, very much so.

1111. And if that had been the doctrine held at first, there would have been no occasion to have said a word about common employment, would there?—I think there would.

1112. If the master is liable at all, what does it signify whether the person who sues him is in common employment or not?—He is liable if any of his machinery or tools for which he may be properly said to be responsible, that is to say, to his knowledge, are defective.

1113. But not if the failure of the tool was the fault of the manager?—No; I believe that is the law now.

1114. The manager is a common servant with the working man, and therefore the master is exempted from liability?—Yes.

1115. And, therefore, it comes to this, that there is nobody for whom the master is liable at all?—I should like to say that I make a great question whether that is a desirable condition of the law, where there is what has been called a vice-master.

1116. The law amounts to this, that the master is liable for his own negligence, and for nothing else?—Yes, very much so. I was going on to state my view with reference to the proper case of the negligence of a fellow servant. I say the burden of proof is upon those who would alter

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the law; and, I think, not only do they give no reasons for altering it, but good reasons could be given to the contrary. The reason, I suppose, that would be given for altering it is, that it makes the master take care to have in his employment proper servants, who shall not injure their fellow servants by their carelessness or improper conduct. One cannot say, I suppose, that a law to the contrary of the present law would be an unjust one; because it would be a law of general application, and would not be retrospective, and, therefore, I suppose, could not be properly called unjust; but it would be very inexpedient and, to my mind, as near unjust as could be, because it would punish all careful masters who did their best to get good and well-behaved servants, in order to ensure catching one who did not. And I do not think there is any necessity for it; because a master always, for his own sake, for the sake of his property which is imperilled by the negligence of his servants, and for the avoidance of appeals to his charity, which are always made, and reasonably enough made, when people meet with an accident in his service, and in order to avoid interruption to his business and otherwise, has the strongest possible interest in getting good and careful servants. It strikes me that the danger is the other way, and that really it is much more the master who requires to be protected against the servant than the servant against the master; and that if you were to make all the servants liable to indemnify a master for the mischief one of them has done, it would be much more reasonable than to make the master liable to the servant for the act of a fellow servant. If a servant injured his master's property, that would be much more reasonable, to my mind, than to make the master contribute to the payment of a loss sustained by a man from injury done by his fellow-servant. Everybody must know (it is a very respectable feeling in one point of view, though I think an erroneous one), that servants will never complain of the conduct of each other to the master. Though I think, upon a more strict view of their duty, they should do so, they do not; they let things go on wrong time after time, and mischief be done and danger be incurred, and they make no complaint at all. I think it is very desirable to guard against that. Then there is another thing which, really, I can speak to of my own knowledge, from the cases which I have tried; the recklessness of workpeople is wonderful, and it is astonishing the risks they run. They get familiarised with them; they forget the old proverb that the pitcher goes often to the well and is broken at last. I think all those considerations go to show that it is really much more the master who requires to be guarded against the negligence of his servants where he is not to blame himself, than it is the servant who requires to be protected against the negligence of a fellow servant. And there is this to be borne in mind, that the fellow-servant has so much better opportunity of judging of the conduct of his fellow servant than the master can have, and is so much more able to guard himself against it. Of course there are many cases to which that observation cannot be applied; as, for instance, the case of the driver of a steam engine and a platelayer, where the platelayer's act may be a negligent one, and of course the driver of the engine does not see it and cannot tell of it, and cannot in any way guard against it. But it would be

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difficult to lay down, in my opinion, a law which should include such a case as that and give a servant the right of action against his master, and which yet would not include a good many cases that it would not be desirable to include. I venture to say this, I cannot see why a man should have a right of action against another for the negligence of a fellow servant. What has the master done wrong? What have you to complain of in him? Why should he pay damages for injuries that he has not occasioned, either directly or indirectly? I think, therefore, as far as I can judge, that the general law, which I will not say exonerates the master, for it is an erroneous expression, but which says that a servant has no claim against his master for the negligence of his fellow servant, is a much better one than the contrary law would be. And really when one knows what juries do, and I may say judges to, the strong disposition they have to help a man who is not so well off against one who is well off, which, I suppose, is commonly the case in question between masters and servants, I think it would be perfectly terrible if any such law were introduced. For my own part the first thing I should do then, if I were an employer of labour, would be to get a form drawn up, in which everyone in my service should stipulate that under no circumstances would he bring any action against me. I believe the notion is is that the Bill would be permissive, and that any practice of that kind would not be prohibited by it. The question is whether it is desirable to have the rule one way, but which people may contract themselves out of, or the other way.

1117. What do you say as to agents; for instance the agent of a mine. Supposing that by his negligence a workman is injured, do you think that there ought to be a remedy against the master for it?—I think so; I cannot but think so, if ever anybody other than the actual wrongdoer is to be liable. If I am not mistaken a somewhat ludicrous consequence almost follows otherwise, that is the extreme difficulty of making a corporation liable. I think it has been urged that a corporation never can be liable, because they are never the negligent persons and they are not liable for the negligence of their manager, which seems preposterous.

1118. Would you confine that to the single manager, or would you extend it to subordinate managers; take, for instance, a stationmaster as an example?—I should doubt that very much indeed; I should be very much disposed to say that a man ought to have a claim for the negligence of any person who was doing those duties that properly were the duties of the master; but I should doubt very much whether it ought to be so in the case of a stationmaster, who really is a servant.

1119. The servant there is also a master; he has control over others?—He is a servant, and also a master, so is every foreman, I suppose.

1120. Now take the case of railways. As I gather from your opinion, you think that the law which punishes railway companies with heavy damages for the fault of a platelayer is an unjust law in the case of a passenger who is injured?—No, I do not think so.

1121. Is that because there is a contract between them?—There is a contract between them; the company have undertaken to carry him with due care and safety.

1122. Where does it appear that they have undertaken

Chairman—continued.

dertaken to carry with safety?—The common law of the land.

1123. They have undertaken to insure him is that what you would say?—No, not insurance; carriers of goods are insurers, not carriers of passengers.

1124. How does it fall short of insurance?—In the case of goods, when carriers are carrying goods if the goods are injured though without any default on their part, as, for instance, if a person should wilfully put on the railway an obstruction which threw the train off and damaged the goods, although the company were perfectly free from blame, they would be liable. In the case of a passenger they would not be liable in such a case as that; they only undertake to use due and reasonable care; and if an individual were to undertake to carry a person from one place to another, and used due and reasonable care, then if he delegated the doing of it to somebody else he must delegate it with the same obligation.

1125. As regards railway servants travelling on trains in the execution of their duty, a guard, for instance, do you think the law is fair which deprives them of relief in case of an accident?—I think the law is fair which gives the guard no remedy. It does not deprive him of one.

1126. Because of the contract?—Because he has not stipulated for it, because I cannot see any reason why the master should pay. I am unable to see a reason. It seems to me that when he makes his claim he ought to give a reason for it; to my mind he cannot give any.

1127. With regard to these implied contracts, will you have the kindness to tell us what is the process by which a court of justice arrives at the conclusion that there is an implied contract between two persons where it is quite certain that one side of the parties never knew of it at all, the implied contract of a workman that the master shall not be liable to the man for any damages?—I said I thought that was an unfortunate expression, and that it should be rather expressed thus: that he had not contracted to be indemnified.

1128. Has not the condition of persons been very materially altered by these implied contracts which the courts have set up?—No, I do not think so.

1129. You think there is no difference from what there was 40 years ago in the situation of a workman?—No, I think not. I said that the cases that had arisen were modern, but I do not know that there was any principle to the contrary before then.

1130. Is it not rather to be regretted that when such great changes are introduced it should be done entirely by judicial agency, and without the action of the Legislature on the subject?—With great respect I deny there has been a change. If formerly the law had been that the master was liable under these circumstances, and if now it was held that he was not, for the negligence of a fellow servant, I think there would be a change; but I think your own observation went to show, and I believe the fact is, that there is no case which goes to show that the master was liable for the negligence of a servant, before these cases which have held that he is not.

Mr. *Tennant.*

1131. Am I correct in assuming that the law now is that a master who manages his own works is responsible in case of accidents that are directly attributable to his own orders?—That is so compendious a question that I could hardly say yes or no to it. If he were to order two men to do a thing, and one of them in the course of doing it was negligent and injured the other servant he would not be liable.

Mr *Tennant*—continued.

1132. But what if the accident directly arose from the orders which he gave?—Suppose he told a man to go up a particular ladder, he would not be liable if the ladder were a fit ladder for the man to go up.

1133. But supposing that his orders were like this, that the workman was told to do something in a colliery which directly contributed to an accident by which several people were injured?—If the master were to tell servant A to do a thing the doing of which injured servant B, not from the negligence of A, but from the character of the act itself, the master would be liable.

1134. That is what I meant; but assume that the owner did not manage his own works, but had a manager to whom he delegated his authority, and that a similar accident arose from the orders of that manager; would the master then be liable?—I understand not, as the law at present stands. I think it very questionable whether it ought to be so.

1135. And questionable whether it is so?—I believe the law is that in that case the master is not liable, because the manager is a fellow servant; but I say I doubt very much whether that is a reasonable law, unless on the ground that none but an actual wrongdoer should be liable.

1136. Then to that extent your opinion would be that the law should be altered?—I should think so, or at least made consistent.

1137. Would you have much difficulty in defining that, so as to make it quite certain how far the authority went, and where the liability extended?—I was going to add that I think the great difficulty would be in the definition, the limitation, and the restriction necessary.

1138. I think you said that in the case of a bricklayer, where he received day wages, the master would be responsible for his acts?—Yes.

1139. But that if he contracted for a lump sum to do the work he would not?—I did say what was very much to that effect. The difference perhaps is better expressed in this way; if the employer can tell the man how he shall do the thing he is to do, then that to my mind establishes the relation of master and servant; but if he contracts with him to do it, so that the person contracted with has a right to say, "I must do it, but I shall do it after my own devices," then the relation of master and servant does not exist.

1140. But if that contractor, when he assumed the character of contractor, carried out the work in accordance with some views of the master himself, then the liability would attach; that I understand from you is the law as it now stands?—If I employ a man to do anything, and the doing of it of itself, though carefully done, injures anybody, I am liable whether he is my servant or not. If I employ a man to do a thing, the doing of which is no necessary mischief, but the mode of doing which causes a damage to somebody, I am not liable unless that person is my servant; and he is only my servant where I have a right

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Mr. *Tennant*—continued.

to tell him not only to do it as he has agreed to do it, but how he shall do it.

1141. The liability attaches from your telling him the mode in which he shall do the work?—Yes; to use a familiar illustration, I hire a cab to take me to Hyde Park Corner; I have no right to tell the cabman whether he shall whip his horse or not; but if my servant drives me in my carriage, I may tell him to go faster or more slowly.

1142. Then, supposing the law were altered at all, the liability might be evaded by the masters making contracts with their servants, making them, in fact, sub-contractors instead of servants?—Yes; I have very often thought it would be a prudent thing for a man to job his horses and coachmen, and not have them as his own.

Mr. *Macdonald.*

1143. Your lordship stated that the workmen had a better opportunity of seeing what their fellow workmen did than their employers?—As a rule.

1144. Do you know anything of mining, my lord?—Very little.

1145. Then are you aware that the duties of miners are assigned chiefly by statute; that each has got his own particular work to perform under statute law?—I cannot say yes; I know there has been a great deal of statutory regulation about everything lately, and I believe that mines have had a good share of it.

1146. In mines 300 persons may be employed, or 500 persons; these 300 persons or 500 persons by these statute laws are ordered to remain in their own particular working place; if they leave it they are under a penalty of 2 *l.* or two calendar months' imprisonment; how could it for a moment be said that these men have any control in their employment, directly or indirectly, over their fellow men?—I cannot say that it is so.

1147. I think you have alleged that it is so?—No; I spoke generally of master and servant. I did not speak of mines. It would have been great presumption in me to have said anything about mines, for I know nothing about them.

1148. The object for which this Committee was appointed was as follows; "to inquire whether it may be expedient to render masters liable for injuries occasioned to their servants by the negligent acts of certificated managers of collieries, managers, foremen and others;" now you have stated that these persons have control; who employs these workmen?—The employer or the master, I suppose.

1149. They are assigned by statute law the place where they are to work, and how they are to work; then how can they in the slightest degree have anything to do with, or control over, their fellow-workmen?—I am far from saying that they have; I have said already that in the case with which I am familiar, as all of us are, the case of the engine-driver and the platelayer, who begin their work, perhaps at a distance of 100 miles from each other, it is impossible to say that one of them can have any check over the other.

1150. But the engine-driver and the platelayer do come in contact to render an injury necessary; but in a mine, where the men may be four miles distant, or a mile distant, by law they can never come in contact, and yet one may do a serious injury to the others; how can they be in

Mr. *Macdonald*—continued.

any way responsible for, or in any way have any knowledge of, or take any oversight or control over their fellow men?—In no way that I know of.

1151. Then your lordship will see that what you have laid down as a general principle is, undermining, at least, an exceptional condition of things?—I suppose there are very few general principles, or general observations, which are not subject to some exception.

1152. Then would you apply your observation to workmen who have no control over others who are so placed, that they may do a serious injury to their fellow men, and actually do serious injury to their fellow men; would you place them in exactly the same position with men that could control them?—Yes, I should ask this question: why should their master pay them for a mischief which he has not done?

1153. If a master employs a person who is entirely negligent and does it frequently; if he employs an ignorant man, a man taken from an agricultural district, and he has a safety lamp, and one day causes an explosion, would you not in that case render the employer liable?—You introduce the words "negligence," and "does it repeatedly." I think there are good grounds for contending that where a servant is habitually negligent, and likely to injure a fellow servant, and the master is cognisant of that, or with due superintendence ought to have cognisance of it, there the master is a faulty person; and if you could lay down any rul ewhich should catch him, without introducing a great many cases which ought not to be introduced, I should not be sorry to see that, or object to it; but you introduce that word "repeatedly" in a way which may make a very great difference.

1154. If a master employs a person from the agricultural districts, places a safety lamp which can only be used with skill into the hands of that person, and that person causes an explosion and thereby kills 300 or 400 persons, would you not hold the owner responsible in such a case?—You put a particular case which comes to this, that a person puts a dangerous implement into the hands of an unskilled person which does mischief, I should be very much inclined to say, whether he was a master or anybody else, that I would make him pay for the consequences.

1155. Then I take it that you hold that the employer ought to appoint or employ only persons that are skilled, and that for every unskilled person, or any accident caused by the act of an unskilled person who is a fellow-workman, the employer should be responsible?—I say, I think if the employer knowingly employs a dangerous person or implement, and the person or implement does mischief, there would be good ground for holding him liable; and the only difficulty I have is this, that if you were to make such a law as that, actions would be brought, and it would be contended that the implement or the man was dangerous, and juries and judges too, with their compassionate feelings towards a sufferer, would be sure to find that it was so when it was not. And there ought to be this qualification also upon it; that if the fellow workman knew of the danger in the man or the implement, then I certainly would preclude his recovering.

1156. In that case he would be himself contributory?—Not strictly so, in point of law; it would

Mr. *Macdonald*—continued.

would not be what would, in point of law, be called contributory negligence, because he would undoubtedly be able to maintain an action against the fellow workman who had done the mischief, if he were worth suing; but, as far as his master is concerned, he ought clearly, to my mind, to have no remedy.

1157. If the fellow workman in a mine sees that workmen are employed by the employers, and he has no control whatever, neither directly nor indirectly on their employment, would you regard it that a workman should be liable to all the injuries and accidents that persons so employed would cause?—I am very glad you have asked me that question, because it reminds me to say something I have wished to say. Certainly I would give him no remedy. Why does he not leave the employment if he knows it is dangerous? To my mind, it is a sad thing to hear men come into court, as I have heard them, and excuse themselves for not having done that, on the ground that their bread depended upon it, or something of that sort. I should like to see a more independent feeling on the part of workmen, so that they would say, "I will have nothing to do with a man who employs dangerous things or dangerous persons." And, besides, you must remember that when people are engaged in a trade dangerous, either from the nature of the trade itself, or from the means or the persons who are employed, they charge all the more for it, they are compensated, they receive a sort of insurance premium; and it would be very unreasonable that they should receive damages as well. Suppose the master said to a servant I will subscribe a shilling a week to an accident fund for you, but I must not be liable for any damage you may receive in my service, surely that would be a reasonable arrangement that ought to bind. Suppose he subsequently said I will give you the shilling, the case would be the same, and that is now the case in effect in dangerous trades.

1158. They charge all the more for that, you say?—Surely.

1159. I am sorry to put this question, but are not wages regulated by the supply and the demand?—Yes.

1160. Then they cannot charge more than the circumstances will allow, can they?—The supply of labourers for dangerous occupations is much less than the supply for pleasant and safe occupations.

1161. Is that so?—I should say so.

1162. Would you be astonished if I told you that in certain mining districts where dangers are particularly great, at this moment the men are working for very much less than what they are in the higher occupations; where men in the higher occupations have 5 *s.* and 6 *s.* a day, these men are working at 3 *s.* a day; would you be surprised at that?—No, I believe the price of coal has gone down and wages have fallen with it. An attorney's clerk, I suppose, very likely gets more money than a miner, and his occupation may be much more agreeable and safe; but it depends upon a variety of considerations, the number of persons fit for the thing, and the number of persons who want it, and so on.

1163. So that the argument that an increased wage is paid for dangerous labour is not correct?—Yes, it is.

1164. Will you give me an instance?—*Ceteris paribus*, surely the more disagreeable a trade the higher the pay will be.

Mr. *Macdonald*—continued.

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1165. Give me an instance at the present moment existing of a dangerous employment where the men have better pay?—I give every instance. An agricultural labourer gets less than a miner.

1166. Your lordship stated, I think, that if an employer ordered his servant to go up a ladder, he would not be liable if he fell off that ladder?—I should say so now, clearly, that he would not be liable.

1167. If the ladder was faulty, if it was rotten, would he not be liable if that ladder were the employer's ladder?—If the master knew, or ought with due care to have known, the defective condition of the ladder and the servant did not, the servant would have a right of complaint; but if the servant also knew of it, and went up it, and the ladder broke and he was injured, he would have no right of complaint.

Sir *Daniel Gooch.*

1168. Would it be possible to alter this law without making it applicable, not only to all mines, but to all manufacturers and to private life as well; it must be a general law if altered at all; it must apply to private society, must it not?—I suppose in point of drafting you could limit its application; but why you should limit it in point of principle I am at a loss to see.

1169. I want to know whether you think, in point of principle, a law of such kind as that proposed by the Bill now before us must be a general law applicable to all parties?—Yes, as far as I can see.

Mr. *Eustace Smith.*

1170. I only want to pursue the illustration of the ladder one step further. Supposing that the ladder were defective, and that the person who ordered the workman to go up the ladder had full means of knowing that it was defective, that person would be liable to the workman if an accident occurred. I think that is the state of the law, is it not?—Yes, supposing the workman did not know it also.

1171. But supposing the person who ordered the workman to go up and who had charge of the ladder was not himself a master, but was a delegated agent of Messrs. Cubitt or Messrs. Holland, or some other large builders, am I right in believing that, in the present state of the law, the workman, although he might suffer the same injuries from the defect in the ladder, would have no action against Messrs. Cubitt, or Messrs. Holland?—No, not unless you could bring home to them personally a knowledge of the defective condition of the ladder.

1172. But if they had exercised sufficient care in appointing a man who was generally reputed to be fit for the place of manager, and if they had no acquaintance with the state of the ladder themselves, no action would lie against them?—That is what I understand the law to be, and I am not sure that they would be under any liability even if they had not appointed a proper person.

1173. May I ask your opinion as to whether you think it a satisfactory state of the law that a large employer who, for the sake of the large profits of a large business, delegates his responsibility to another person, should in that way avoid a pecuniary responsibility to which a smaller employer, who looks after his business himself is liable?—I certainly cannot see the reason of the thing unless it is from the necessity

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of the thing. If it comes within the principle, so let it be. It seems to me that the fundamental notion at the bottom of the views of those who entertain a different view from what I do, is that there is something in the nature of things, some natural right or justice, which should make a master liable. I cannot see why. In the case of the small builder he is a person doing something wrong by the supposition. In the case of the small builder he is not; he carries on his business in a particular way and does nothing wrong; and I cannot see why, in the nature of things, he is to compensate a person to whom he has done no wrong.

1174. You think the workman could exercise his own judgment as to whether he would enter the service of a small builder or a large one?—He might do that certainly; that is a just observation enough.

1175. And you would consider that there might be concerns, such as large mines, which it is desirable should be carried on, and which, from the absolute necessity of the case, could not be carried on, unless the master was able to delegate his power to managers to a certain extent?—I suppose that is so.

Mr. *Hopwood.*

1176. Lord Justice Bramwell, I should like to ask you one or two questions. I understand you to say that you think that there are cases in which the master should be liable for a vice-master?—I think so with much doubt, unless the principle is adopted that only the wrongdoer shall be liable.

1177. Have you matured, in your own judgment, any examples which would enable one to form an opinion how far the law should, in your view, be altered?—I really cannot say that I have. I do not know whether I ought to excuse myself to the Committee for not informing myself on matters of detail. I did not think I should be here to-day, but my great wish was to state my general opinion that the common notion that there is a natural right to damages against a master is, to my mind, an unfounded one, but I could not answer your question by sketching out any cases at once.

1178. It would hardly be of any use then to give some illustrations and ask your judgment as to the feasibility of altering the law in detail?—I cannot say till I have heard them; it is very likely it would not.

1179. I would only take the one case that has been mentioned to you of the stationmaster; assuming that for all purposes he is a vice-master of the corporation, and assuming as I have a right to assume, some case in which damage arises from a direct order of his, for which if he were the master the master would be liable; do you not conceive that, in such a case as that, the corporation, that is the employers of the stationmaster should be liable?—I cannot see why. If the stationmaster could pay as well as the employer, I suppose he would be the proper person to go to. It seems to me that the only reason of going against the employer is the great convenience of his always having his pockets full.

1180. Might I ask what vice-master was present to your mind, if that case is not such as you were alluding to?—I agree that it is difficult to give any definition, or even description; but where the person called a vice-master is precisely in the situation of the general employer, I think

Mr. *Hopwood*—continued.

there is some ground there for saying that the persons who have put him in that situation should be liable, if he is not a competent person, to pay the damages; but, I think, it is very difficult to draw the line, and I have very considerable misgivings how far the distinction exists.

1181. I understand you to say that you would not alter the laws affecting the liability of the original employer in all cases in which he may be implicated by his own negligence or the negligence of a vice-master placed in his stead?—I should be very circumspect in any alteration of the law which would make an employer liable under those circumstances.

1182. You would not think that there was any danger in altering the policy of the law if you could, making it possible for an owner of large works to remove himself from the ground and live at a distance, delegating his authority to another, who should be, in fact, in point of law, a servant is common employment with the men under his command?—I have said before, I think it a very difficult question. It seems a strange thing that a corporation which cannot be guilty of negligence, except by its agents, should not be responsible, and yet if the same persons were dissolved as a corporation, and carried on the business as a private partnership, they should be. It seems an anomaly, and unreasonable, and one would be very glad if it could be remedied in any way; but I think there ought to be great circumspection in doing it. It is always to be remembered that in all these cases of supposed negligence or misconduct on the part of the servant, he would always be liable: then the question always is whether you should go beyond him to somebody who really is guilty of no wrong, no negligence, no misfeasance of any sort or kind; and, to my mind, that is always a very difficult question. At the same time there is the anomaly I mentioned of the corporation differing from an unincorporated partnership.

Mr. *Knowles.*

1183. I will trouble your lordship with one or two questions in relation to mines. Probably you are aware that the Mines Regulation Act prescribes now that every manager shall have a certificate of competency granted by Parliament?—I did not know it.

1184. That is so. Assuming that a coalowner employs, which he is bound to do by law, a man with a Government certificate of competency, and that an accident occurs in consequence of something that he ought to have done, but had not the presence of mind to do, would you then hold his master responsible?—The statute prescribes that something shall be done, and the manager has not done it from inadvertence. I should think that in that case the master would now be liable in point of law. I think so; through the non-performance of a statutory duty a person would have been injured.

1185. Not exactly a statutory duty; for instance, where an accident at a colliery does occur, which not only destroys the lives of the employed, but causes great destruction of the property of the owner, I never knew one yet (and I have known a great many) in which, after it had occurred, it could not be pointed out that, if something or other had been done, it would have been prevented. Then it might be said, "Why did not the master do that which would have prevented

Mr. *Knowles*—continued.

prevented it?" Now, in that case would you consider that a negligent act on the part of that person, if he complied with the Act of Parliament as laid down at present, though he might have done something more to prevent the accident if he had had the presence of mind: would you consider the master responsible in such a case?—I suppose what we should have to do there would be to leave that case to a jury. I should say that there was evidence of negligence; but, if I had to leave it to a jury, I should leave it with the observation I continually make to them (very ineffectual in most cases where people are seeking to recover damages for injuries), "You must not suppose that people are negligent, because experience has shown them that something might have been done that previously was not done; otherwise our ancestors would be more and more negligent the further we go back." But, though I have often said that to a jury, I do not know whether they pay much attention to it when the question is whether a master shall pay his servant damages, or generally whether a person shall pay damages.

1186. I understood you to say that you did not consider the law new, as at present defined, but that within this last 30 or 40 years it has not been more clearly defined?—I do not consider it new as differing from the antecedent state of the law, but novel in this sense, that the cases have arisen. People did not think, perhaps, that they had got any such right of action formerly.

Chairman.

1187. Supposing a master employs, not the principal manager, but another agent, whom he selects and employs, and that agent commits some piece of negligence, you would say that that negligence was not in any sense done by the master, as I understand you?—I think so, if I understand the question.

1188. You do not admit the maxim, *qui facit per alium facit per se* applies there?—Will you kindly put the question again?

1189. I will say a stationmaster appointed by the governing authority of the railway; he commits some act of negligence by which a servant of the company is injured; you would say, I understand, that the master had not done that act of negligence?—I should, and I should not. If it was an outside person, if I may so say, or a passenger, I should say that the maxim there did apply; but if it was a fellow-servant, I should say that the maxim applied, but that the consequence did not apply; that there was no reason why the master should pay the damages if the act done, *per alium*, is in itself hurtful he is liable because he has ordered it, but he does not order the negligence.

1190. Because the fellow-servant had entered into a contract that he would not demand damages?—Because he had not entered into a contract that he would, if you will permit me to make that verbal change.

1191. And your view is, that if a servant does not enter into a contract that he is to have damages, he is not entitled to them in any case?—I do not say in any case; I think if there is a fault in the master he is entitled.

1192. But why do you except that case?—Because I think it is a wrongful act, and in all reason he must pay; I think he must be taken

Chairman—continued.

to have contracted that he will not misconduct himself.

1193. Do you think that a subordinate agent, who is wielding the authority of the master, is not liable to that same observation, that he has contracted not to be negligent to those under his charge?—Let him be liable. I think the master does not undertake that his servant shall not be guilty of negligence to his fellow servants.

1194. I will put one more case; a man sustains an injury by the misconduct of a subordinate agent, say a stationmaster, for instance; somebody must lose by that; either the man must sustain the injury and bear it as well as he can without any remedy (I suppose the stationmaster unable to pay), or there must be a remedy against the master; you say that the man must bear the loss, as I understand?—I do, because I do not see why the master should.

1195. I was going to suggest a reason, and I was going to ask you whether there is any force in your opinion; is there not a rule of law, that where of two innocent persons one must suffer, the person who trusts is the person who is to suffer; and is it not the fact in this case that the master trusts the subordinate agent with the power?—No doubt the rule of law is that, where there are two innocent persons, the one who has confided in a rogue who has done the mischief is the loser; that is the general rule; but I do not, with great respect, see how that applies to a case of negligence; because there each party has trusted. The porter at the station has trusted the stationmaster to behave himself properly, and the railway company have trusted the stationmaster to behave himself properly.

1196. And the fact that the master has put him in a position in which he has been able to do this mischief has no weight, you think?—I think that is immaterial, because the servant has also put himself in the position. He can go if he likes, and he makes his own terms.

1197. Is there not the difference if the master has chosen the agent who did the mischief, and the servant has had no choice at all in that matter?—But was open to the servant to enter into the service or not if he pleased.

Mr. *Tennant.*

1198. But you would make the law different, as I understood you, provided the master had knowingly employed a reckless or incompetent man?—I should say certainly so, and indeed I believe it to be the law now. I should like the Committee to understand that I think the law does not go far enough now. Suppose there are two tradesmen that have got jobs at one house, and one is a plasterer and the other is a plumber; if the plasterer's servant does an injury to the plumber's servant the plumber's servant may maintain an action against the master plasterer; and if the plumber's servant does an injury to the plasterer's servant the plasterer's servant may maintain an action against the master plumber. It would be a prudent thing for those two persons, if engaged in a difficult and dangerous job, to say, "Let us go into partnership, and have our servants in common," and then the plumber might injure the plasterer and the plasterer might injure the plumber, and nobody be liable.

Chairman.

1199. Have you seen the report of a recent case in Scotland, where something like that point

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has been decided; there was some work in a mine on which a contractor was employed, and the contractor's servant was injured by the negligence of a servant of the master of the mine in which he was at work; and the Scotch Court held that the servant of the contractor and the servants of the mineowner were common servants, and that "therefore there was no remedy at all; the judges differed on it, I believe?—There is a recent case very like what you have mentioned, that came before our Court here; it was the case of a pumping engine. I am by no means clear that the law goes far enough to protect employers. In the case I put of the plumber and plasterer, I should think that the law ought to protect both the masters there.

Mr. *Macdonald.*

1200. If they entered into a contract they would both be protected?—If they entered into partnership they would, and reasonably enough.

Mr. *Hopwood.*

1201. I understood you to say something on the subject of corporations not being liable for negligence; I did not understand you to state that at large as a proposition; I only ask you for the sake of correcting the appearance it may take; as I understand it, a corporation may be liable for the negligence of its servants?—Clearly.

Mr. Hopwood—continued.

1202. There was, for instance, the case of the Manchester corporation and the gasfitters employed by them; and one of them chipping a piece of gas pipe, which struck a passenger in the eye; the corporation were liable there; I think the point was there discussed; it was the case of Scott and the Corporation of Manchester?—That case was tried before me, and I ruled that they were liable. When I talked about a corporation not being liable for negligence, what I meant to say was that the corporation never was actually negligent; it acts by its servants, and is liable for their negligence with respect to outsiders, or those persons whom it has contracted with.

Mr. *Knowles.*

1203. That was not a question of one workman injuring another, but a third party?—Yes.

Mr. Robert Baxter, called in; and Examined.

Mr. *Baxter.*

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Chairman.

1204. What is your profession?—I am a Parliamentary Solicitor.

1205. You are also a proprietor of mines, are you not?—Yes.

1206. Where?—I am partner in two mines in South Yorkshire, and two mines in South Wales.

1207. Have you any other office?—I am Chairman of the Coal Owners' Association for South Yorkshire and North Derbyshire.

1208. Have you any statement that you would like to make to us on the subject that we are inquiring into?—I have known the working of mines, been conversant with them as owner, and as giving directions for the last 30 years; and the extraordinary risks that are incurred in coal mining are what very few people apprehend, unless they have been conversant with it. I look at the South Yorkshire district, and I find that in the last 30 years there have been no less than six very serious accidents, involving the loss of about 800 lives. One colliery, 29 years ago, the Darley Main, had an explosion of gas where 75 men were killed. At the Oaks, at Barnsley, 25 years ago, there were 55 men killed; and at a second accident at the Oaks, 10 years ago, there were 370 killed. At the Edmunds Main, 14 years ago, there were 57 killed. At the Swaith Main, in the year 1875, there were 69 killed. At the Lundhill Colliery, 20 years ago, there were 170 killed. All these were from the explosion of gas. It may be said why are not better precautions taken against such accidents? There is every possible precaution taken that man can devise but the gas lies in the colliery; the coal is constantly giving out gas; we could measure the exit of the gas and the quantity of air that is necessary to drive it away if it came regularly; but it is with gas as it is with water; you sometimes strike a point in the coal which lets out a magazine of gas, and all the workings of the pit in the course of a quarter of an hour will be filled by the gas that comes out of this reservoir, and all the men have to leave the pit until the ventilation of the pit has driven out the gas, and restored the atmosphere to a healthy condition again. The uncertainty, therefore, of the quantity of gas makes it almost impossible to guard against it; and these severe accidents are constantly occurring in spite of every possible precaution. I may remark as to precaution, that every morning before the men are allowed to go into the pit, triers are sent round to all the workings of the pit, and the men do not go in until these triers have reported that the workings are free from gas. Wherever gas is found the workings cease, and the men come out until it is cleared again; but in spite of that these accidents occur. Other accidents come from fire, of another character. In one of my pits we had a man coming out one Saturday night; he either lit his pipe or snuffed a candle, and the pit was set on fire; it was not discovered till the men were out of the pit, and until the smoke had been driven from the mouth of the down cast through the whole of the workings to the up cast; and when the fireman reported the fire, it was too late to stop it; and for two years that pit was closed. I think it cost us some 20,000 *l.*, without reckoning any loss of profits, to get that pit open again. We pumped into it a hundred millions of cubic feet of choke damp or black damp, which puts out fire, hoping to put the fire out by that means. We also filled in both of the pits to the depth of ten yards with soil, and we put about another ten yards of water on the top of the soil, so that no atmospheric air could possibly go through the shafts into the workings. We kept that on for six months. We then opened it again, but still the fire was there. We dared not restore the ventilation, because we should have had an explosion of about 150 acres of explosive gas, which would have blown all the workings to pieces. We, therefore, devised the sending of men with divers' dresses inside the pit; they were not surrounded by water but by this gas, which would kill anybody

Chairman—continued.

Chairman—continued.

body in a few minutes; we had some dresses made; we had some miners up to London to try them, and they were courageous enough to go with these dresses into the pit, and they felt for the fire along the walls of the passages, and wherever they found any heat or fire they walled up the workings; and so by that means we got the fire surrounded by walls, and then restored the ventilation of the pit and got it to work again; but it took us three months after we had restored the ventilation before we could put out the fire at the bottom of the pit; such is the force of it after it has been long burning there. Now, besides these dangers from fire, there are dangers from accidents to machinery, and there are dangers from the falling of coal upon the men, which is a most common occurrence. As the Committee are aware the men in order to get the coal have to lie down, and work their pick underneath the coal; so that before they make the coal fall they are probably head and shoulders under the coal; if they are not cautious the continual knocking at the coal brings down the coal, crushes the men, and thus they are killed. They all have props which they may use if they will, and have every means at hand to guard themselves; but some men are less cautious than others, and in some instances the coal is more treacherous than in other places; and so they meet with their death. Again, there is the bursting in of water, as was seen in a pit the other day. They carry the works on to where other workings have been, which have become filled with water, and then the water bursts in on the workings where the men are at work, and if they cannot get out of the pit they are drowned. To all these accidents the man engaged working of coal is liable. If the master were to be held liable for all the defaults of his men he would be responsible for all these accidents; and it would be impossible for any man with capital safely to go into such an undertaking. We have millions and millions of capital now embarked in coal mining. It, more than any one thing, conduces to the prosperity of the country; the coal enables us to make machinery more cheaply, to make iron more cheaply, to make our locomotives more cheaply, than other countries; and the prosperity of the country depends upon the working of the coal. But no one with capital would ever dare to go into these enterprises if he were to be liable for every accident that occurs. I know from experience with my own collieries, and from converse with other colliery-owners for the last 30 years, that before that unfortunate prosperity of the coal mining which we had some three or four years ago, the profits upon coal mining were comparatively small. The risk in sinking the pit is very great; you may sink upon a fault where you do not get the coal; you may sink and not find the coal you expect, or of the quality you expected. And the money embarked in coal mining, to my knowledge, has not on an average made a return of more than 4 or 5 per cent. Now that is not at all adequate to the risk that is run by those who spend their capital in these undertakings. The prosperity we had some four years ago revolutionized coal mining, and has been the most unfortunate thing that has ever happened to the trade. It induced the spending of enormous capitals to open a greater quantity of coal; the consequence now is, that there is not one colliery in 10 that is paying anything; many are losing money every day, and

Chairman—continued.

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the remainder are making very small profits; that is the state of the coal trade at present. But speaking of the law, as I see it is laid down before this Committee, it seems to me that the law which absolves an owner from the liability, is a necessary law in all cases where large capitals are required to conduct a business in this country. And take collieries: in collieries there may be invested 100,000 *l.*, or 200,000 *l.*, or 300,000 *l.*, and a vast number of men are employed; if the owners of those collieries were to be liable for all the accidents arising from the negligence or misconduct of these men, there would be no end to the liability, and capitalists would shrink from the investments. You have now absolved the owners; the consequence is that they enter with more confidence into the business, and put their capital into their works; and you have got established in England what you scarcely have in any other country, a free outlay of capital upon works of this character in the confidence that they may get a fair return for their money. If the owners are to take all the risks, and make compensation to their workmen, they would get no return or next to no return for their money in all probability; and in many cases they would be absolutely ruined. Take the case which occurred in South Yorkshire of 350 men being destroyed by one explosion. If the owner had to make compensation to all those families, it would be absolute ruin to the owner of the colliery, the accident arising, perhaps, from the simple fact of one of the men lighting his pipe when going out of the pit before he had gone beyond the reach of the gas. Then, again, I see a question has been raised as to whether the masters should be responsible for the misconduct of the managers. Now that would only be to bring the master under liability in a new form, and the liability which I deprecate on the part of the master, and which I say would prevent the outlay of capital, prevent those works going on in this country for which this country is celebrated, would recur but only in a new form, coming upon the master through his manager. No coalowner now can appoint a manager until after he has a certificate from Government, after he has gone through an examination on the part of Government as to his fitness.

1209. But there are a good many managers who have been taken without that, are there not?—They must have been managers at the time of the passing of the Act. Excepting old and tried managers who have been under the eye of the Government inspector for years before the passing of the Mines Act, all managers now must undergo a preliminary examination and receive a certificate of fitness, and that is not all; they are liable at any moment to be complained of by the men or any of the men in the mine, if the men think them unfit, or if the men think they are guilty of any omission or any indiscretion; and on that complaint being made to the inspector, a Government inspector, he is bound to examine into it, and he is bound to have a remedy provided. And thus there is given to the men the security, first, of the examination, and next, of their having the power to make complaints, and get the man suspended if he is doing anything wrong; and furthermore, under the Mines Regulation Act the men have the power themselves to inspect the mine. We know, practically, that the men in the pit know more about the condition of the pit than

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any master or any manager; and you find among the men a consciousness whether the pit is safe, or whether the pit is unsafe. If they feel it to be unsafe they have a statutory power of making their complaint, and then they bring the responsibility directly home to the manager. Therefore, I say, if you make the owner answerable for the misdeeds of the manager, you bring back again the very state of things which the law has now shut out, namely, that the owner himself shall be answerable to his workmen for the injury which they do as between themselves.

1210. Supposing the manager is a competent person, able to pay, would you make him liable?—Certainly, for anything that he himself does wrong every man must be liable. Then I do not know that there is any other matter that occurs to me at the present moment. As I have said before, the prosperity of this country depends mainly upon its coal; the getting of the coal, whether profitable or not, depends upon the masters being able to get it without being responsible for the misdeeds of the men between themselves; if you throw that responsibility upon the master, either by an alteration of the law which will make the master directly answerable, or by an alteration which makes the master answerable for the misdeeds of the manager, you bring on a state of things in which capital would be withdrawn from coal mining, and this country would not have the same quantity and cheapness of fuel that it has at present, and all the manufactures of the kingdom, the produce of the kingdom which maintains its pre-eminence in the world as a manufacturing country, would be affected.

1211. Is there anything else you have to say?—I do not think of anything else at the present moment.

Mr. *Knowles*.

1212. With reference to certificated managers, you are aware that the men are represented on the Examining Board?—Yes.

1213. And that they have now an opportunity of protesting against any candidate having a certificate of competency, if they chose to do so?—Yes.

1214. Have you ever known any one case in which they have objected?—No one has ever come before me.

1215. Then with regard to the competency of the managers that obtain certificates simply because they were managers at the passing of the Mines Act without any examination whatever, are you aware that they obtained certificates through the recommendation of the inspectors who at that time, at all events, were supposed to be the judges of their qualification and fitness?—I was not aware that a manager *de facto* at the time of the passing of the Act was made dependent upon the certificate of an inspector.

1216. Not the certificate of an inspector; but that the inspector had to recommend them to the Home Secretary as competent men before they could obtain a certificate?—Yes, if they applied for a certificate.

1217. And that if the inspector chose to refuse to recommend them, or to say that they were fit and competent, the Home Secretary has refused repeatedly to give the certificate?—I conceive that as a matter of course the Home Secretary would refuse certificates to anyone whom the inspector did not recommend.

Mr. *Macdonald*.

1218. You have been asked the question, if you knew of the workmen's representatives complaining or objecting at Board meetings to persons being passed at these Board meetings and granted certificates; have you attended such Board meetings yourself?—No.

1219. Do you know anything of the working at all?—The only knowledge anyone could have of what passes at those examinations is from report and conversation amongst the parties interested in collieries; that is all.

1220. But you know nothing of the Board meetings?—I never attended them as a matter of course.

1221. You have been asked if the inspectors had the power of recommending a manager, at the time of the passing of the Act, to the Home Secretary for his certificate; is there any provision in the Act, directly or indirectly, giving such a power to the inspectors to refuse a person who had been acting as a manager a certificate?—I have not read the Act to that effect; but, speaking from my remembrance of the Act (I have it before me, and can refer to it if it is important), it says that every manager who was a manager of a mine at the time of the passing of the Act may be appointed by a colliery-owner as manager of his colliery.

1222. So that it did not depend upon the inspector, but upon whether he had been a manager at the time?—If the inspector found anything against the man, of course he is liable, like any other man, to be complained of and removed.

1223. You have said that if further restrictions are to be placed upon the owners of mines the capital would be withdrawn; if a portion of capital was withdrawn would it not be better for the capital that was left?—Of course; and at the present moment the capital is so much in excess that all the continuing owners would be very much obliged for the withdrawal of the capital. But that is not the normal state of things; the normal state of things is, the more capital employed in collieries the more coal you get, and the cheaper you have it; the more you restrict the capital, or capital is withdrawn, the dearer is the coal, and the less of it is consumed.

1224. So that it would be very much to the advantage of coal-owners if capital were withdrawn?—At this moment it would be, because there is a surplus of capital invested.

1225. You mentioned the case of the large colliery explosions in South Yorkshire; adjoining your colliery is the Edmunds Main?—Yes.

1226. You mentioned that explosion in the list?—I did.

1227. Do you remember the verdict of the jury in that case?—No, I do not.

1228. If the jury found that the explosion was caused by the action of the managing partner, Joseph Mitchell, do you think that the company ought to have been responsible for that act?—If he were the owner, according to the present state of the law, he would be responsible; but if he were a mere manager he would not be responsible.

1229. But he was the managing partner; would you not have the company responsible, even if he was the managing partner?—I would not have the responsibility of explosions thrown upon the owner at all, because if it were it would withdraw the capital out of collieries. But I do not

Mr. *Macdonald*—continued.

not know what the verdict of the jury was there, and there are certainly no actions, as far as I remember, in that case.

Mr. *Tennant.*

1230. As I understand you, you do not quite agree with Lord Justice Bramwell in what he thinks, in so far as he thinks alterations in the law should be made?—The only matter in which I presume to differ from him at all is that he said it would require great caution in doing, but he thought it ought to be considered whether in the case of mismanagement on the part of a manager there should not be a responsibility on the owner. I think that is what he said; I do not agree with that certainly.

1231. You think that the law should remain as it is with regard to that?—I think it is absolutely necessary in those great undertakings that it should remain so, or else, as I said, you will break up the undertakings.

1232. You do not think it fair that the law should be altered in another respect, namely, that the master who does manage his own works should also be absolved from liability?—I do not suppose that a master manages his own works except they are small works, and then he has every man under his eye, and can exercise his own judgment upon them.

1233. But why should not a master manage his own works, and have quite as large works as if he employed a manager to manage them for him; surely a master may be quite as competent as a manager?—There are masters who are competent if they give themselves to the trade; but those are not the men generally who possess the large undertakings. If you speak of a colliery that has 100,000 *l.* or 200,000 *l.* in it, you will not find a man who has that capital condescend to manage it himself.

1234. Supposing he was part owner?—If he is merely a shareholder or part owner, certainly he ought not to come under any liability.

1235. Do you think you could draw a distinction between whether he were part owner or whole owner?—I think the law would draw it now. I do not think in the case of a part owner or a shareholder in a company they would be responsible, if one of the shareholders were appointed manager; that would possibly create a liability as in the case of an owner managing his own colliery.

1236. But you would make him individually responsible?—I would make a man in the management of a small colliery individually responsible, because he could exercise his judgment upon the men he appointed, and he would be upon the spot to see whether anything went wrong; but you cannot carry those principles into the large concerns of this country, and if you do you break up the commercial character of those undertakings and make capital withdraw itself from them.

1237. At the present moment, the manager is directly responsible if he causes an accident?—The manager himself, if he misconducts himself, is personally responsible to the extent of his means; but that does not entail any responsibility upon the owner.

1238. But if he were part owner, of course he would still be responsible?—Part owner is a difficult thing to define. You may have 100 *l.*

Mr. *Tennant*—continued.

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or 100,000 *l.* of capital; the man with 100 *l.* in it I should not call an owner.

1239. But you would not absolve a man from liability as he increases his stake in the concern?—Yes, if the man is the owner of the colliery, and managing it as his own, the law has said that he is to be responsible; that is the law at present, but if he is a mere shareholder in a limited company, or holds a share as a partner in a colliery, he is not the owner of the colliery, and not responsible, I conceive, as I read the law.

1240. Then you would keep the law as it is, as regards that?—Yes. I think in the present temper of things it would not be wise to make an alteration in that direction, lest you excite the feelings of the working people that they are not properly protected.

1241. Do you think, supposing the owner of a colliery was made responsible for accidents arising directly from the orders of the manager, that would, in point of fact, involve him in large pecuniary liability?—Immense. It is just the same thing as his being responsible himself; it would not be less than that; he is responsible for the mine which his manager manages; that is just the same thing as if he were primarily responsible. I think these fearful responsibilities which I have alluded to would attach to him through the manager, if you alter the law in the direction you have hinted, most certainly.

1242. Do you think that these accidents are attributable to the acts of managers?—I cannot say that I have known any one of these great accidents directly attributable to the manager in any way.

1243. Then you see the liability is nil?—If it be so; but then you must remember the infirmity of mankind. If a man can bring an action against his master, and the jury is to determine whether there is negligence or not, what chance has the master before a jury against the poor man and his family and his relatives, with health and property gone; what chance has the master there? And if you open the door to litigation, a flood of litigation will rush in upon you, and, under the guidance of juries, you will never know what the decision will be, except that, practically, you know that, in nine cases out of ten, the juries give the verdict against the master and in favour of the men.

1244. But all that litigation could be carried on at this moment against the manager; the manager is not generally in such very bad circumstances that he could not afford to pay some damages to the person injured, is he?—But take any one of these great accidents, where is there any property that a manager would hold that would compensate? Every man in the mine, as far as my acquaintance with collieries goes (and it is now of some years standing), is as keenly alive to what is going on as to ventilation and regulation and ordering as the manager himself; and the men, if they see the danger, will take care to get out of the danger, or make the manager feel that there is danger, and then he will be obliged to remove the cause which they think to be dangerous. It is not the case of going blindly to work and taking the chance of the accidents; they are all alive to what is going on, and all make their remonstrances. I do not know a more independent set of men in the world than coal miners.

1245. I daresay you could tell the Committee

 whether

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Chairman—continued.

whether, in point of fact, miners are paid higher wage, which forms a sort of insurance fund; Lord Justice Bramwell was asked that, and could not answer the question?—Yes; the pay of the miner, *cæteris paribus*, is double the pay of the agricultural labourer. I hear it said that a miner takes 3 *s.* a day; I should like to find him and employ him.

1246. What do you pay them?—We pay nothing less that 5 *s.*, 6 *s.*, 7 *s.*, 8 *s.*, and 10 *s.* a day; that is what the miner gets.

1247. Do you mean that they are earning that at this moment?—Yes, certainly.

Mr. *Macdonald.*

1248. Do you pay that for day wages, 5 *s.*, 6 *s.*, 7 *s.*, 8 *s.*, and 10 *s.*?—No, that is what the men get by working the coal.

1249. They are piece workers?—Yes; but there can be no comparison between the wages earned by a miner in the pit, and the wages earned by an agricultural labourer in the field; there is no comparison between the two; they have always been at least 50 per cent. above agricultural wages, very often double, and sometimes treble.

1250. You refer to the South Yorkshire district?—My chief acquaintance is there, and the South Wales district; but I have no doubt it is the same all over the kingdom.

1251. Are the wages the same in South Yorkshire, and South Wales?—No, they are lower in South Wales than in South Yorkshire.

1252. And the risks are equal?—No, there is not the same risk in the South Wales coal that I work as there is in the South Yorkshire coal. It is not so gaseous, and therefore not so inflammatory. They go generally in by day drifts there.

1253. Are you aware that the inspector's reports show that the South Wales coalfield is the most dangerous, more fatal accidents having taken place there than in any other district?—That does not apply to the coal that I work.

Mr. *Macdonald*—continued.

Sir *Daniel Gooch.*

1254. Colliers might earn a good deal more than they do if they liked, they limit each other to the production of the lowest man in the colliery?—At the time of the high prices in coal they limited each other, and they wanted to limit the masters too; they would only work a certain number of hours, and send out a certain number of tons; and they told us in Wales that they were forbidden by their union to send out more than a certain quantity, or they would very gladly have done it. That is our experience with the colliers.

1255. In fact, they might have earned a good deal more wages if they had liked?—They certainly might, and get a great deal more coal.

Mr. *Macdonald.*

1256. Are you able to give them full time now?—No.

1257. So that they could not earn more wages if they liked?—They cannot do it just now; and if "just now" were to continue long, half the collieries in the kingdom would be shut up, because the masters are not getting a penny, but are paying to carry on the work; they are working the collieries for the benefit of the men, in point of fact.

1258. For the benefit of the public?—For the benefit of the men in the first instance, and for the benefit of the public afterwards.

Chairman.

1259. With a view to self in the end?—Self is never out of sight.

Mr. Henry Currer Briggs, called in; and Examined.

Mr. *Briggs.*

Chairman.

1260. What is your employment?—I am Chairman and Managing Director of Henry Briggs, Son, and Company, Limited, Whitwood Collieries, near Normanton, also chairman of an iron and coal company working collieries and ironstone mines in Durham and North Yorkshire. I have had upwards of 20 years' experience in the practical management of collieries and iron works.

1261. Have you anything to state to the Committee on the subject of their inquiry?—I have read the Bill in reference to employers' liability for injury, and also the reference to this Select Committee. I am opinion that the law, as it at present stands, goes as far as justice demands, inasmuch as an employer is responsible when he is personally in fault for the selection of incompetent managers, or for personal refusal or neglect to provide sufficient and proper machinery or materials for the use of his workmen. In the case of a colliery-owner, he is bound by law to obtain the services of a manager whose competency must be certified either by long and efficient service, or by special examination. In this respect the position of a coalowner is very analogous to that if a shipowner, who is bound by law to employ a pilot holding a certificate of competency, and who on that consideration is not held responsible for the negligence of the pilot whilst his ship is under the pilot's charge. I am aware that an objection has been raised to this comparison on the ground that the shipowner is bound to take the first pilot that offers, whereas a mineowner is left free to select his manager; this is true to some extent, but it must be borne in mind that the selection is limited by law to certain holders of certificates of competency, and that, moreover, the mineowner is responsible if he does not take due care in the selection of the best man he can obtain; irrespective of this his material interests compel him to avoid running any risks which can be avoided in order to insure careful management. In the case of collieries the law also gives to the workmen the right of inspection of collieries whereat they are employed, and of appeal to the inspectors appointed by Government; they thus have every opportunity of ascertaining from personal inspection, and from consultation with competent authorities whether any special risk is involved in taking employment at any given colliery. Through the trades' unions and check weighmen who are invariably officially connected with the trades' unions, any man can also ascertain the character and competency of the certified manager, as well as the special risks (if any) existing at a colliery before he applies for and accepts work.

Chairman—continued.

Chairman—continued.

work. On the other hand, it is practically impossible for a mineowner or mine manager to ascertain the character of all the men who apply for work. The men, through their unions, strongly object to any condition of employment being imposed, that the applicant shall bring a clearance note from the last employer that the man holding such note has left his work free from any taint on his character, as being an infringement of individual liberty. The colliers are, as a rule, a restless and moveable class of men, although, of course, there are many exceptions. I find in our own case, taking statistics, that at the collieries with which I am connected, during the year 1876 there were altogether set on to work at the collieries, and to whom copies of the rules were issued, 1,676 men; the average number of underground workmen we employ is 1,046; so that the average term which each man remained at work was only 7½ months. Of course many remain a much shorter time, and a great number have been with us for a large number of years; but that shows that there is a restlessness in the population in the collieries, and that the men vary much in length of service. I do do hold that the higher rate of wages paid to men employed underground than to men of a similar standing and class employed on the surface, covers and includes the special risk necessarily and unavoidably attached to the calling of the miner, even in the best regulated pits; and included in that risk is that arising from the possible carelessness or fault of those persons forming the organised body employed in various departments of the mine. This view of the case is proved by the fact that in West Yorkshire, the district with which I am most familiar, the men always demand through their trades' union and obtain an additional payment of from 1 *d.* to 2 *d.* per ton for working coal in such districts of any pit where it is deemed prudent to work with safety lamps instead of naked lights. The extra wages which, under such circumstances, would be paid at the pits under my management alone would amount to not less than 2,500 *l.* to 3,000 *l.* per annum. I am most strongly of opinion that any alteration in the law which tends to reduce the personal responsibility of the manager, and those in authority under him, or to diminish vigilance and caution on the part of the workmen, would be very mischievous in its effects, and would have a great tendency to encourage carelessness on the part of the workmen. The alleged anomaly which has been referred to in evidence given before this Committee in reference to the present law pressing hardly upon small proprietors is more theoretical than practical as far as collieries are concerned. I do not know any single instance either in the West or South Yorkshire coal districts, or in the Durham coalfield, or in the Cleveland ironstone district, in the whole of which districts my experience has been gained, of the proprietor of a mine acting also as the certificated manager of his mine. The demand upon the time and personal attention requisite for the safe management of a mine in conformity with the present Mines Regulation Act, which expressly demands daily supervision, is too stringent to admit of any actual proprietor taking with any prudence the position of certificated manager in addition to the commercial and financial work required for the successful carrying on of his undertaking. Of course, in some of the

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small mining districts, there may be collieries so managed by the proprietor; but there are none to my knowledge; but in such cases the proprietor knowingly accepts the additional risk, and if he personally undertakes such work, he probably will be a man of small capital whose pecuniary position will not really be so good or not better than that of the certified manager of the larger, and very probably better equipped collieries. I am of opinion that any alteration in the law which would increase the pecuniary risks attendant on mining would be prejudical to the public interests, and eventually to the welfare of the workmen, as it would inevitably prevent further investment of capital in undertakings which were accompanied by such inordinate and uncertain risks; and, in a still more important respect, such an alteration would be essentially unjust to those who have already embarked their capital in mining enterprises, on the faith of the present law remaining unchanged, as such capital is invested in a great measure, in dead work, worse than valueless if the undertaking is stopped, and subject to responsibilities for dead rents and royalties amounting, in many cases, to thousands of pounds per annum over long terms of years. I have also heard an argument raised that, as the mineowner receives the profit, he ought therefore to bear all risks both to his workmen and all outsiders. The fact almost universally is that the owner of a mineral property is desirous to have his minerals utilized and rendered productive; he is unable, incompetent, or unwilling to work them himself; he therefore proposes to let his minerals to a lessee who is willing to risk his capital in mining, and who contracts to work the minerals, and to pay the landowner certain dead rents and royalties. The lessee thus runs all risk of profit or loss in carrying out his contract, and is responsible to his lessor to the last farthing for the payment of the dead rents and royalties, probably for a long term of years. The opening out of the mines probably gathers together a large population, and the operative miner voluntarily comes to the place and enters into the employment of the lessee, and is in a condition to demand wages commensurate with the risks to which he is exposed in the fulfilment of his contract also irrespective of whether his employer can work the mine to a profit or not. The miner has, as before stated, every facility already granted him by law for gaining every information and advice as to the special risks he may have to encounter at any given mine, and can cease to expose himself to those risks at any time he may think fit. It is, therefore, in my opinion, a complete fallacy to say that mining operations are conducted for the sole benefit of the employer, whose profit, even in the best of times seldom reaches the amount of the royalties he has to pay to the mineral-owner. I think these remarks embrace most of my views on the subject which is before the Committee.

Mr. *Walter Stanhope.*

1262. I want to know your opinion on this; where an accident arises from a culpable mismanagement or neglect of the certificated manager, do you think there should be any alteration in respect of the liability of the owner, and if not, will you tell me why?—I think not, if the owner has taken every possible precaution

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Mr. *Walter Stanhope*—continued.

to select a really efficient and competent man to take the situation under him.

1263. I suppose this is the case, that after an accident has been investigated, very often the cause which led to that accident is discovered?—Yes.

1264. And that an argument may be used that if the manager had done this or that, the accident would not have occurred?—Very probably it is so; but every manager is fallible; he cannot foresee everything that may happen, and if the owner has taken the best means that he can (and he always does so, in my opinion, both for his own interest and the welfare of his own workmen) if he has fixed upon the best men he can, I think the responsibility ought to end there.

1265. But you think that that fact in the investigation of whether the manager was guilty of neglect or not, should be fairly investigated when you are looking at the cause of an accident which has already happened, as compared with the opportunity a man would have of judging beforehand of the possibility of such an accident arising; in other words, the question would be whether a manager would get a fair trial as to his culpable neglect when the cause of an accident had become clearly evident after the accident, but was not known before?—Of course no manager would allow an accident to happen if he foresaw it, and therefore he can hardly be to blame if it is a thing which he could not in ordinary circumstances have foreseen.

Mr. *Hopwood.*

1266. You have no objection to the owner being liable, if he does not secure a skilled manager?—No; it is the law now, I believe, though I am not a lawyer, that he is responsible for the selection of a proper and efficient man.

1267. Then you have no objection to that being tried whether the owner has employed a skilled person or not; that would be a question of fact in the trial, would it not?—It would be a question to be tried whether the master had taken proper precautions in obtaining the man. Of course, the fact of a man holding a Government certificate is some guarantee to that extent. As has been said, the certificates have not all been gained by examination into competency; but of course that was done as a kind of compromise at the time, in order to meet the case, and those managers who were appointed for their term of service, are gradually dying out, and will be replaced by men who must have obtained a certificate by an examination.

1268. It is not always possible to get skilled managers, is it?—It is very difficult to get one, as far as I know, who thoroughly satisfies one's own mind, one's own desires. Of course, with the enormous amount of capital that there is involved, it is the interest of the coalowner to select the very best man he can; and the amount of the salary is a comparatively small matter in comparison with the risk he runs by appointing an inefficient man.

1269. If a master cannot get a skilled manager, what is he to do; does he take one who is unskilled, sometimes knowing it?—Well, I do not think that the scarcity of skilled men is so very great yet, because a great many mining engineers have gone into the trade lately, who have got certificates of competency.

1270. You say it is only difficult, it is not impossible yet, to get skilled managers?—It is not impossible.

Mr. *Hopwood*—continued.

Sir *Daniel Gooch.*

1271. The master is obliged to have a certified manager by the Act; is he not?—He is obliged by the Act to have a certified manager.

1272. Who is a skilled manager?—Yes, a skilled manager. I think there is a fault in the Act in this respect, that a mineowner is bound only to have one certified manager to be responsible both for the above ground and for the underground work. In our case we attempted most strongly to have two; we had a very competent engineer, and we wished him to be appointed certified manager, so far as all the above ground machinery went, and for the underground man to be exclusively devoted to the underground work; but we found it was impossible; it was not allowed by law; we were bound to appoint one man responsible for the whole, and that I think is a mistake. It would have been better, if by the Act, in a large colliery such as ours, we could have appointed two men, one responsible above ground, and the other below ground. It would be rather difficult, perhaps, to draw the line, where the responsibility of one begins and the other ends.

Mr. *Macdonald.*

1273. You say that if an owner of a colliery employs a responsible person, a person who is skilled and has taken all precautions, the owner should not be liable for his acts?—Not without the owner is in personal fault.

1274. But if a railway company exercise all the skill that they can possess, and select the very best man, if you or your wife were smashed up, would you hold them responsible?—That is a different matter; that is a matter of contract then between me and the railway company.

1275. But you would think that they ought to be responsible for your being smashed up, even if they had exercised that care?—It is the law that they should be, and I would avail myself of it.

1276. Then you are satisfied with that law?—I have no reason to object to it.

1277. But you think if a similar law were applied by the workmen to you as a colliery-owner for the action of the manager it would be a very bad law?—Yes, I do, if it is not my personal fault.

Mr. *Tennant.*

1278. You say that in point of fact the risk that these men run is compensated by the increased wages that they receive; Mr. Baxter gave us some actual figures; can you give us any figures?—I believe I have here some averages of what the earnings of the men employed are.

1279. Without going into details, what is the result?—I can give you in the principal seam, the Stanley Main Seam, the average previous to the last reduction of wages which occurred on the 15th of March and since that date.

1280. The present wage I want?—Since the reduction the average in our two pits, which are working from 6,000 to 7,000 tons a week, is 6 *s.* 3·96 *d.* or nearly 6 *s.* 4 *d.* per man per day for the days they have worked; and on an average they will have worked never less than four and sometimes five days a week.

1281. Then what is the wage to men whose occupation

Mr. *Tennant*—continued.

occupation you say is less risky, the top men?—Probably to labourers about 3 *s.* 6 *d.* Of course to carpenters and skilled men who have served an apprenticeship, the wages are from 5 *s.* to 5 *s.* 6 *d.*

1282. But you would call a collier working down below a skilled man, would you not?—No.

1283. And do not you think that some of that higher rate may be attributed not so much to the risk as to the unpleasant nature of his employment?—Possibly it may; but, however, that is about the rate of wages they earn.

1284. It is not a nice work, that of getting coal?—Not especially; some men much prefer it to working on the surface and being exposed to the inclemency of the weather.

1285. Is that so?—In our pits there are many. We could not get them to work above ground.

Mr. *Knowles*.

1286. You have been asked whether a railway company would not be responsible in case you met with an accident while travelling; would they not also be responsible to a passenger in case he was a working man?—Yes, if he were a workman not employed by that railway company; if he were a workman employed by the railway company, I believe they would not.

Mr. *Knowles*—continued.

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1287. Providing he were a collier travelling as you might be travelling, would they not be responsible?—Certainly.

1288. Do you look at the cases as both being the same, in one case you pay to be conveyed somewhere; but in the other case, where you have a workman, you pay him to perform a duty?—Yes; without doubt I do.

1289. Do you see any difference between the two, or not?—Yes, I do certainly.

1290. You have been asked about the different wages; do your colliers work as many hours a day as your carpenters and topmen?—No, not so many hours. The underground men that are paid by the day work eight hours, but the men that are paid by the piece-work, any length of time they please, but on the average, I should think, about seven hours. The topmen work about 10 hours.

1291. So that the bottom men get more wages for less hours' work than the topmen?—Less hours' work, of course; it is more arduous work, and naturally they work less time. I do not grudge them their wages.

Mr. George Findlay, called in; and Examined.

Chairman.

1292. What is your position?—I am the Traffic Manager of the London and North Western Railway.

1293. You are aware of the object of this Committee?—I am.

1294. Have you any statement that you would like to make to us with regard to it?—I have read very carefully the evidence that was given before this Committee last year, and also the motion of reference to the Committee, and I have carefully considered its objects.

1295. Is the statement that you are about to make your own statement only, or is it authorised by your Board?—It is my own statement authorised by the Board, and in a degree, not altogether, but in a degree it is the general evidence of the companies connected with the Railway Association. There will be other railway witnesses called before you.

1296. Will you tell us what companies those are?—They comprise most of the principal railways in the Kingdom. One of the points referred to this Committee, if I understand it properly, is to inquire whether it is expedient to render masters liable for the injuries occasioned to their servants by the negligent acts of certificated managers of collieries, managers, foremen, and others to whom the general control and superintendence of workshops and work is committed. I have carefully considered that question, having regard to a railway point of view only; and I think that if it were attempted by the Committee to make the foremen or the managers responsible as if they were masters, they could not stop short of making the railway company liable altogether for the act of every foreman or servant exercising a small authority over others, however small that authority might be. In the management of railways there are three or four departments that are presided over, first of all, we will say, by the general manager, who is responsible for the general arrangements and working of the traffic, and the general control and discipline of the staff connected with the traffic department. Then there is the engineer who is responsible for the engineering department, the maintenance of the permanent way, and for all the men acting immediately in the conduct and execution of works. Then there is the locomotive engineer who is responsible for keeping the rolling stock in perfect order, the engines, carriages, waggons, and for the appointment and discipline and good order of the men immediately under him in that department. And my view is that if each of those several heads were made responsible, as if they were masters, it would produce in the management of the railways three distinct, not only departments, but three classes of employment; and instead of the common employment and community of interest which is necessary for the proper working of a railway between all those several departments being maintained, you would have the traffic officer responsible for acts which his servants might commit to the servants in any other department, either of the locomotive or of the engineering.

Chairman—continued.

Mr. *Findlay*.

1297. Do you consider that the question we have to consider, is whether he is to be responsible for the acts of his servants; is that your view?—My view was this, that if the Committee were to attempt to define that, there should be a distinct responsibility upon the heads of each department, it would be necessary to carry out that distinction throughout the whole grades of the department, and therefore in the working of a great railway, you would have three distinct classes of men, really serving the same company, but still not in common employment; and if that were pursued to the end, even in the case of the traffic department, I say it would be impossible to stop short of making the company responsible altogether for every accident that might

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might occur to their servants from whatever cause. Then I wish to say with regard to the railway service that it is generally very popular, that we have no difficulty in recruiting the necessary number of men required from day to day to carry on the service, that they are very carefully recruited, that great pains is taken in inquiring into a man's antecedents and his character, and when he is once selected he is most carefully trained for the duties that he has to perform; and speaking with now some 25 years' experience I may say that no men are put in charge of responsible posts until they have been thoroughly tested as to their qualifications for the duties they have to perform; that these men, as in the case of engineers, drivers, or guards, are generally promoted from some subordinate position in the service, that they are eager to obtain the higher paid positions as guards and engine-drivers, and that they knowingly enter into the responsibilities of that position, taking all the risk, being fully conversant with it at the time that they seek these engagements to important and responsible positions. Therefore I say it is as much a contract between the companies and their servants that the men take the risks when appointed to their posts, as if it were a written law. Custom has made it so, and the men seek eagerly after these appointments, knowing the risk and the danger attendant upon them. Many of these risks arise from causes over which the railway companies have no control whatever; such as that of the elements, snow storms, fogs, and floods. All those are things of which the men are quite willing to take the risk. Generally, I believe, that any alteration of the law, so far as the railway companies are concerned, would result in no real public advantage. I should just speak upon one point probably, as it is a matter that the Committee may attach more or less importance to, particularly with regard to the evidence of Mr. Evans, who appeared before the Committee last year. Mr. Evans, I believe, was formerly a railway servant in some position or other, and he now acts as secretary of the Railway Servants' Amalgamated Society. Now he was good enough to inform the Committee, speaking no doubt honestly from his own belief, but very wrongly as far as my experience goes, that the principal cause of accidents upon railways (and he mentioned that as one reason why the Committee should seek to alter the present state of the law), was the excessive hours of labour, the non-enforcement of certain of the companies' rules ostensibly made for the protection of the men, the non-adoption of the most approved appliances conducive to the safety in working of railways, the want of proper accommodation for the working of the traffic, and the employment of inefficient persons for the performance of responsible duties. I certainly am very much surprised to hear such causes as those alleged, on the part of Mr. Evans, or any other person, that railway companies, that is, that boards of directors as honourable and second to no men in their social position in this kingdom, responsible for the working and management of these large undertakings, and who have spared neither expense nor pains in the construction of the works and in their maintenance, and the employment of proper appliances for carrying on the works, should be told by Mr. Evans, whose experience cannot entitle him to speak on a subject of this

Chairman—continued.

kind, that railway directors are, as a body, responsible for the accidents to their servants, from such causes as these. I do not believe that, and I do not believe that any person except those whose interests are opposed to those of railway companies generally, would have made such a statement. Upon some questions I speak for railway companies generally; but I now speak more particularly of the North Western Company. We have, I may say roundly, about 45,000 men engaged upon the North Western Railway, of whom 24,000 are engaged in the actual conduct of traffic, the residue being engaged in other departments, and many of them in workshops which, of course, would come under the ordinary Factory Act. We have in connection with the staff both an Insurance and Provident Society, that is, an Insurance Society for providing assistance to men who suffer unfortunately from accidents and a Provident Society for meeting cases of sickness; in the case of death a certain sum is paid by these societies varying from 20 *l.* to 40 *l.*, and sums of from 25 *l.* to 35 *l.* are paid in cases of permanent disablement; a weekly contribution during temporary disablement or illness is given for a period of 26 weeks of sums varying from 12 *s.* to 18 *s.* a week; and for a remaining period of 26 weeks, one half those amounts. For lads, whose wages are under 12 *s.* a week, the payments and benefits are somewhat less.

1298. The men contribute to this, I suppose?—The men contribute to this. The company contribute to both societies about 2,300 *l.* a year, and all the fines that are imposed upon the men for neglect of orders, or regulations, or things of that sort, in the course of the year, are paid into the credit of this Provident Society. It is managed chiefly by the men themselves, with some assistance from some of the superintendents in a higher degree in the service, and I may say that those two societies are very flourishing indeed, that they have large balances, a sum of over 5,000 *l.* in the one case, and 11,000 *l.* in the other. Of course if any alteration of the law were to take place, it would be no longer the interest of the company to contribute and assist in carrying on societies of that character.

1299. What do the men contribute; in what proportion?—The men contribute according to scale. The lowest contribution is for the Insurance Society 1 *d.* a week rising according to class to 3 *d.*, and for the Provident Society 2 *d.* a week going up to 4 *d.*

1300. That is stopped out of their wages?—That is, the men agree to contribute that out of their wages, and it is stopped out of their wages at the time of payment by their own authority; and the machinery by which the society is kept up, and the distribution of the funds, and all that, is managed by the company. I think those are the principal points that I have to bring before the Committee.

Mr. *Tennant.*

1301. You say that if you altered the law at all, you would scarcely know where to stop?—I think not.

1302. If you once changed the liability, the liability might go down almost to just above the grade of fellow workmen?—I think so. I think, in answer to that, I may point out that we have so many grades of foremen in the railway service. Take the operation of shunting. We have one man

Mr. *Tennant*—continued.

man who is called a shunter, who gets a guinea or 22 *s.* a week, and another man who is called a foreman shunter, who gets perhaps 2 *s.* a week more; and it appears to me that if it were carried down to make the company responsible for foremen of that class, a man might in the ordinary execution of his duty be performing an act from which an accident results to himself, for which the company would not be responsible; but if he were told by the other man standing by his side, and only a grade above himself, to do that work, though it was an ordinary incident of his every-day business, the company would be responsible in the latter case, and not in the former.

1303. But supposing the law were extended so as to make railway companies liable for the acts of those in authority, and who derived that authority direct from the Board of Directors, do you think that practically that would make much difference?—I think it would; because if you were to attempt to make the manager responsible for the traffic department, the engineer responsible for the engineering, the locomotive engineer for the locomotive, you would have a great concern with the common employment, divided into three separate responsibilities, and I do not think it would be possible to define where the responsibility of one department began, and that of another ended. In every great undertaking like a railway company, you would, according to my view of the case, have destroyed that community of employment, and that common interest, and set, as it were, department against department, which would result in great disadvantage, I believe not only to the company but really to the public themselves.

1304. Supposing that the law were altered with regard to the heads of departments, who derived their authority direct from the Board of Directors, so as to make the company liable for accidents directly attributable to their orders, do you think that practically it would make much difference?—I think it would, from the cause I have mentioned.

1305. Is it not the fact that almost the entirety of the accidents that do happen arise from the neglect of workmen themselves, or their fellow-workmen?—Speaking of accidents to the workmen, I think so; I have taken that out very carefully with regard to the accidents which have occurred during the last year to our own men, and, at the risk of being a little tedious to the Committee, I should like to state the result. Take the number of persons killed in the North-Western service during the last year; there were 83 who lost their lives, and of those 83, 77 men were killed through their own want of caution, and three deaths resulted from the acts of their fellow servants, and three from other causes beyond their own control; so that in 77 cases the men were contributory by their own negligence to their death, which unfortunately occurred, and in six other cases they were not so contributory.

1306. But is there any case where you can trace the death direct to the immediate action or order of a head of department?—In this list that I have, not so. There are three deaths resulting from the action of their fellow servants; but so far as my return goes there is nothing to show that any of these deaths resulted from the action of anyone in authority over the men themselves; and it appears to me, of course, very odd that it should be urged that when the men are themselves responsible for their death they do not take care of themselves, and that they would be more careful as to their own safety, and therefore their own lives if the company were made responsible. It appears to me an argument that I cannot understand at all, that if the law were altered to make the company responsible they would be more likely to be careful for the company's interest than they are at this moment for their own.

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1307. In point of fact, in your railway for the past year, it would have made no difference to you pecuniarily whether the law had been altered in the direction I have just mentioned, or not?—My difficulty is that if the law is altered at all it cannot stop short at the point where you wish it to stop.

1308. But supposing we do stop there, I only wanted to ask your opinion as to what the effect would be. Do I also collect that you think that if there were any alteration of the law with regard to extending this liability, it would prejudicially affect these provident and insurance associations that you mentioned?—What I did say with regard to that was this, that the company would not have the same interest in giving their support and pecuniary aid and countenance to their management which largely benefit the men, not only in case of accident, but in case of ordinary sickness.

Mr. *Macdonald.*

1309. What class of workmen are there most accidents among in railway work?—I should say in shunting operations probably.

1310. Is the shunter or the engine-driver the best paid?—The engine-driver receives more pay.

1311. Is the guard, the conductor, better paid than the shunter?—Goods guards and shunters receive probably about the same rate of pay. The passenger guard receives a higher rate of pay.

1312. So that in railway work, at least, the persons that are in the most dangerous employment have a lower rate of wages than the persons who are in less dangerous employment?—To that degree it is so. You must always bear in mind that in the case of the man who receives a higher rate of pay the element of danger is not the only thing that you have to consider. You have to consider the skill and experience of men in each class capable not only of performing the operations of shunting at a station, but of driving a train with safety at 40 or 50 miles an hour on a long journey, and doing that with confidence. A shunter is not required to do that. The risk is greater, and greater experience necessary in the case of the engine-driver than the shunter.

1313. But judging by results the danger is greater in the shunter's case than in the other?—If you look at it merely from that point of view it is so.

1314. So that higher danger is not in the railway really compensated by increased pay?—Not that the only consideration is danger, as I have attempted to explain; there is no doubt that the shunter who, after all, is very little more than an ordinary porter, receives a higher rate of pay than the porter, because his work is more onerous than the porter's, but there is no analogy between the case of a shunter and an engine-driver, the two classes of men are different.

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Mr. *Macdonald*—continued.

1315. You take exception to some of the evidence of Mr. Evans. I only want to ask you if the evidence of Mr. Evans, on the question of the causes of accident, has not been endorsed by the finding of the Royal Commission on Railway Accidents, and greatly extended beyond his opinions?—I believe that the Royal Commission on Railway Accidents made a recommendation upon this particular subject, and not, I think, so much upon the evidence of Mr. Evans as upon a memorial which was presented to them, containing a very large number of signatures from railway servants, and that they made the recommendation without hearing any evidence on the other side; and so far as the weight of the recommendation of the Royal Commission is concerned, looking at it from our point of view, we say that it is *ex parte*, and ought not to have been made on that ground.

1316. So that the Railway Commissioners have fallen into the error that you think Mr. Evans fell into?—No, I think not, because the Railway Commissioners themselves were not unanimous upon that subject; and in the separate report made by Mr. Harrison, one of the members of the Commission, he points out that the Railway Commission, I will not say acted unfairly, but rather exceeded that which was proper under the circumstances in making a recommendation upon evidence which to say the least of it was *ex parte*.

1317. That stood one to nine, did it not?—I am not sure as to the numbers, because they were not all present, and some of the members of the Commission had retired since the first appointment.

Sir *Daniel Gooch.*

1318. The heads of departments are not the only people in responsible positions on the railway appointed by the directors, are they?—No; the directors appoint, practically, every servant in the employ of the railway company. They not only appoint me, but acting immediately under me, probably there are 20 or 30 responsible officers in the several grades and positions in the traffic department, who are responsible for the working of certain districts, goods managers, and superintendents, and down to the very station-masters and porters. And therefore, if it came to a question of making the directors responsible for those whom they appoint, they appoint everybody, in fact.

1319. And those appointments are all made after careful investigation by the Board as to the fitness of the person appointed; they are not made simply because the name is laid before them; they do themselves, by investigation or report, ascertain whether the appointment is a proper one to make?—I can state confidently with reference to every one in the railway service, from the lowest porter to the highest appointment, that the most careful investigation is made as to their character and fitness, and as to their being properly trained for the post; and until the directors are satisfied on those points no appointment is conferred.

1320. You were asked something as to risk, and whether an engineman was the highest paid of the class of men who are working men. The engineman's risk is a very serious risk; he is in the front of a train, and has to take the risk of every collision that happens?—There is no doubt that he travels with his life in his hand on every journey he takes; and if it was not for the great care and foresight that is taken in preparing the arrangements for the transit and passage of the trains by telegraphs and signals, and by all those complicated arrangements only properly understood by ourselves, an engine-driver would more frequently come to injury than a shunter.

Sir *Daniel Gooch*—continued.

1321. And it is the fact that an engine-driver is more dependent for the safety of his life upon others than in the case of a shunter; a shunter's accident arises very much from his own negligence?—The safety of the life of the engine-driver depends upon the signalman being prompt, and attentive to his duty, and giving the proper signal at the proper time; it depends upon the platelayer having the permanent way in proper order, and not carrying out alterations, or lifting the road at the time that a train is due, or about to pass; and therefore it may be said that an engine-driver is nearly wholly dependent for his safety upon the acts of others. A shunter, in the operations that he has to conduct, need not run unnecessary risk, and he is not so dependent.

1322. Does it not come to this, that the engine driver is really the man who has the greatest risk outside of his own care and vigilance to encounter?—He is paid, no doubt, for his skill and knowledge in driving the engine, and he receives also a commensurate pay for the risk he undertakes.

1323. The same applies to a fireman who is not the skilled man that the engine-driver is; he is put on from the labouring man as a shunter is, but is paid higher wages than the ordinary class of the men he is taken from?—He is paid 4 *s.* or 5 *s.* a week more, at least, than any ordinary labourer would be.

1324. Do you know anything of the cost of managing these local societies from which the men derive their superannuation allowances in case of sickness, to which the company subscribe, as compared with the cost of such things where they are done, by Mr. Evans' society for instance?—In our case the cost of managing the society is very small indeed. The greater part of the cost and machinery necessary to carry it into operation is provided by the company; I am sure, speaking from general experience, that where such societies are in the hands of the company, they are far better managed and more economically administered, and the men have this additional assurance, that the funds, which are considerable, are strictly applied to the purposes for which they are intended, and that they are not diverted to any other purposes, which is not always the case in trades' union societies.

1325. Then in regard to the antagonism which would spring up between the railway companies and their servants, supposing the companies were made responsible for injuries to them, caused by the acts of their fellow workmen; do you believe that the men would be as well off as they are now with the assistance that the companies give to these societies?—I do not believe it; and I believe it would be very detrimental to the public generally; and further, I believe, as I said before, that railway servants are, as a class, very well contented

Sir *Daniel Gooch*—continued.

tented with their service; that they are a well-paid class of men; and if they are only left alone by these agitators, and trades' union people, they are far better off working in close amity and connection with the company than they possibly could be by any other combination of circumstances where they would be in hostility to the company.

1326. You are aware of the nature of the accidents that have happened to workmen; would it not be the fact that there would be almost endless agitation if a law were established that men in such cases would have a claim on the company?—I think we should be in a constant state of hot water and litigation.

1327. You know even now there is a difficulty in investigating railway accidents to prove who is in fault?—Yes; and if those statements, contradictory and difficult as they are to ascertain the truth of at the moment, were left to a jury to decide upon in the way which has been suggested, I scarcely know of a case where they would not decide that the company was liable.

1328. Do you see any possibility of drawing a line anywhere in the railway service; would you think that it could be taken as drawn at the class of manager?—I do not; I think if it were attempted to draw the line at myself, some further attempt would very soon be made to make every superintendent acting under me responsible equally with myself, because they exercise more direct control over the staff than I do. I am quite sure the thing would not stop there. You must make every man in active control over the staff responsible if you are to accomplish the objects of those who brought in this Bill.

1329. In fact, your position is virtually this: the extent of that railway puts it out of your power to be able to control the individual staff of the line; it must be left by you to inferior officers in different grades, going down to the very lowest?—That is so.

1330. It would scarcely be by a fault of yours that any accident happened on the line unless you knowingly gave some wicked order?—Yes; and in that case if I were to give such an order I should have the risk of being tried for manslaughter over my head; and I do not think it is very likely that I should run that risk.

Mr. *Hopwood.*

1331. You do not give any pensions to the men, do you, for services?—With regard to all those servants upon what we call the salaried staff, such as station-masters, clerks, and all above that grade, we have a regularly authorised superannuation fund, authorised by Act, to which the company contributes largely, and that is a very wealthy fund in which all, except those who are on the weekly list, participate and have the benefit of it.

1332. And that salaried class has nothing to do with the other fund for the weekly servants?—The two societies which I have mentioned to you were especially provided to meet a want which we found necessary in the case of weekly servants.

1333. With regard to the number killed by accidents, 77 I think you say were killed by their own negligence, and three by the negligence of fellow servants. Can you give me the figures of the accidents in which death did not

Mr. *Hopwood*—continued.

result, in addition to these?—I can. This list includes all that have received the most trifling injuries, even in workshops, or in goods sheds, and which really could not be classed as railway accidents, although the parties have received the benefit of the society's funds in consequence of them. It would appear that there were 1,898 persons injured, some of those injuries being of a most trifling character. A large proportion of the injuries were of a very slight nature, many arising in the workshops and warehouses of the company, not properly classed as railway accidents. Of those classified, 321 cases were connected with the working of the trains, and 460 were unconnected with the working of the trains, the remainder being other cases of a trivial character which have arisen from various causes which cannot be classified.

Mr. *Findlay.*

4 May 1877.

1334. Have you any classification of them as you have in regard to the deaths, whether they were by their own negligence or the negligence of fellow servants?—I have got a classification here, not quite in the same form; I will give you such as I have got. It appears that there were 48 injured in what are called shunting operations; there were 52 injured by falling off engines and vans and waggons; there were six by coming in contact with bridges; there were 35 whilst getting on or off engines or trains whilst in motion; there were 249 whilst loading and unloading, or sheeting waggons in goods' sheds; there were 15 whilst spragging or chocking the wheels; there were 47 whilst working at cranes or capstans; there were 10 whilst working on the permanent way; there were 55 whilst walking or crossing, or standing on the line when on duty; there were 19 passing between vehicles; there were six attending to machinery, engines, cleaning them; then there were 11 injured by being caught between vehicles and platforms; and there were 23 by falling off ladders, scaffolds, or platforms; those would be mostly workmen engaged in repairing operations, or things of that kind; then by falling of lamps and waggon doors, and timber weights, and things of that sort, 17; and whilst coupling and uncoupling waggons, 40; of miscellaneous accidents there were about 140; and then a number of very small things that cannot be classified, which make up the total.

1335. But again, I only just ask, you have no classification as to those as to whose negligence it was which caused the accident?—No, I have not got that information.

1336. I suppose in applying your test, that it would give rise to a good deal of litigation; you do not put that as alone an answer to the suggested law, if the law was in itself a just one?—No; if the law was a just one, I should be content to suffer the litigation that arises from it; but to my mind it does not appear possible to make it so.

1337. As a traffic manager, you would have something to say against the law that makes a company insure goods, would you not?—No, I think not. I think that is a law which in the public interest makes a railway company as a bailee for hire, for which they receive payment, responsible for not only the safe custody of the goods, and for due diligence, but actually to insure the delivery of them to the owner.

Mr. *Findlay.*

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Mr. *Hopwood*—continued.

1338. But it produces a vast number of actions, does it not?—No; I think the law in that case is so well understood that in all cases where damage or loss arises, and the railway company has received payment for hire, for work done and services rendered, we invariably pay; and I may mention that we pay very large sums annually.

1339. You have a great many claims?—Thousands.

Mr. *Knowles.*

1340. You have told us how much your company contribute, and how much the men pay weekly to what you call the insurance or provident society; would you tell the Committee what benefit the men receive when injured, or their families when they are killed?—In the case of a man subscribing 2 *d.* a week to our insurance society, and supposing he were killed from accident, his representatives would be entitled to a sum of 35 *l.*, or if he were temporarily disabled he would himself receive 12 *s.* a week for the first 26 weeks, and half that amount for another 26 weeks. In the event of death from natural causes his representatives would get 10 *l.*; and in the case where a foreman, or other servant of a superior class, contributes 3 *d.* a week, the allowance in case of death from accident on duty is greater, namely, 40 *l.*, and 18 *s.* a week in case of temporary disablement. For permanent disablement, in the first case to which I have referred there is 25 *l.* paid, in addition to any benefits the man may have received in the shape of weekly allowance, and 35 *l.* in the latter case. There are 25,000 servants in the company's service who are members of these societies.

1341. Do you find that the men object at all to become members of these societies?—Not in the least. We found a good deal of objection by outside people to their joining the societies when we established them five or six years ago, but it is now made a condition of the service, and the men join it very cheerfully.

1342. Although you seem to have a well organised society, and to have done that, do you know whether it is the case with other companies?—I believe it is so with most; I know it is so with the Great Western Company, and the Great Northern, and the Midland, and some other of the larger companies. I cannot speak for every company.

1343. Would you see any objection to an Act being passed to compel the men, conjointly with their employers, to subscribe to these insurance funds, so as to make provision for them in case of accidents?—I would rather leave it to a good understanding, and contract at the time the service is entered into between master and man. I think the more liberty we can leave to the subject to enter into contracts of that kind without Parliamentary enactment the better.

1344. Do you suppose that it would conduce to the safety of the railway servants or prevent accidents, or make them less numerous than they now are, if railway companies were made more responsible for compensation?—I do not think it would. I believe it would do away with discipline to a great extent; it would produce an

Mr. *Knowles*—continued.

amount of insubordination amongst the men; and with some difficult and troublesome men it would, I believe, go so far as to endanger the safety of the public using the railway, by improper attention to their duty.

Chairman.

1345. How would it produce insubordination?—I think in this way, that men would be disposed to set at defiance the regulations which are laid down from time to time by the company for the purpose of the proper and safe working of the railway, and not only of the railway but of the men themselves; because we find that men do run, being familiar with danger do not hesitate to run, unnecessary risks, and it is our constant care and watchfulness to put an end to that kind of thing, and to make the men obedient to the rules laid down for their safety. If men found that the company would be responsible under all circumstances, which they would be nearly if the law was altered, I think it would subvert good discipline and good order.

1346. You think, if the law was altered in any respect, the company would be responsible under all circumstances?—I think it could not stop short of making the company responsible, under all circumstances.

1347. Why not?—In this way; that if, as has been suggested by one honourable Member, the head of a department were to be made responsible, you could not stop there, because that of itself would not accomplish the object contemplated in this Bill; it must go further, and make the company responsible for every foreman and every superintendent, down to the lowest grade, responsible for that degree of authority vested in him.

1348. You do not seem to be aware that every head of department is at present responsible for his own negligence to the men who may suffer by it?—I am aware of that.

1349. You speak of "making" them responsible; they are responsible already; the question is, not of their being responsible, but of the company being responsible for their negligence?—I meant the company.

Mr. *Macdonald.*

1350. Is it the result of your long experience that, if the law of compensation is altered in the direction of money being given to the workmen for accidents caused by managers, the men would recklessly throw away their lives, and risk their limbs to get that money?—I do not say that at all; I say that the tendency would be to affect the discipline and order of the men if the law was altered, especially if influenced by trades unions and other societies, that it would subvert good discipline, and make the men less careful and obedient to those in authority above them.

1351. Is there any circumstance in your experience which would lead you to believe that the workmen would recklessly incur the loss of limb or life for the purpose of getting compensation?—No, I do not think that for a moment; but it is the disputes as to liability, and the consequent litigation I fear.

Mr. JAMES GRIERSON, called in; and Examined.

Chairman.

1352. WHAT is your position?—I am General Manager of the Great Western Railway.

1353. Have you any statement that you would like to make to us?—I have heard Mr. Findlay's evidence, and I generally concur in the evidence which he has given. I consider that if the law is altered it would be impossible to stop at the manager, the engineer, or the locomotive superintendent. It might be easily shown that they had laid down proper instructions and made proper provision for the safe working of the line, and also for the safety of their staff, but accidents would arise in which such circumstances as those might take place, they would take place, and do take place. In fact, take the case of a signalman at a junction or a station, he there in fact is the manager of the railway for the time being; he has the control of the drivers and the guards, and it is under his instructions that the work is carried on; by a mistake of his an accident occurs, and a driver is killed. I say it would be utterly impossible there to find fault with the locomotive superintendent or the general manager, but it would be perfectly clear that the signalman, himself having full authority, had mistaken his duty or forgotten himself at the moment, and caused the accident. I consider it is quite impossible to alter the law and stop at a chief manager on a railway, whatever the circumstances might be on a colliery, where the manager might be supposed to represent the proprietor; because on a railway the work is divided, spread not at one place as in a workshop, but in the case, for instance, of the Great Western Railway, spread over 26 counties. It would be quite impossible that the manager could be present to see the working, and if it is clearly and satisfactorily shown that all the proper provisions have been made for the accommodation of the traffic, and that proper instructions have been laid down, then I think you must come to the very lowest grade after all; and, in fact, in some cases you must come to this, that where there are three platelayers working together, the one man who gets 2 *s.* a week more than the others is in charge of the other two; in that case he would be responsible, eventually at all events, or the company would be responsible for his act or default. I do not see where it is possible to stop. I consider that the agitation which has been got up with regard to the accidents of railway servants, numerous as they unfortunately are, much too numerous, is got up entirely under a misapprehension. Statements are made, they have been made before this Committee, they were made before the Royal Commission, but no evidence was produced, first of all, to show that the reports are not full reports. I can say with regard to the Great Western Railway that every accident, even down to the pinching of a man's thumb, was kept a record of by the Great Western Board, for many years before an Act was passed requiring the accidents to be reported to the Board of Trade; that is, I mean accidents to servants. It is simply and utterly untrue, so far as we are concerned, and I believe, so far as all the railway companies are concerned, that all the accidents are not reported. Then the next statement is equally so, that the companies are reckless

Chairman—continued.

with regard to the lives of their servants. I can produce now, if it is desired by the Committee, the details of every accident to every servant that occurred in any year, how it occurred, in the fullest detail, and the Committee can judge how far it was owing to the negligence of the company or of the man himself, or the fault of his fellow servant. I think it a most unfortunate thing that persons utterly unable to give accurate information should go about the country, as gentlemen do to their constituents, and who want their votes, and that they should make statements about the long hours being the cause of the accidents.

1354. The duty of this Committee is not to inquire into the conduct of the railway companies, but as to the question of liability?—You have received evidence to that effect from Mr. Evans. No doubt what you say is the object of the Committee. I only mean to say that it is rather unfortunate that it should be circulated all through the country; and you will excuse my saying that; I thought it necessary to contradict it.

1355. You are of opinion that no change whatever is necessary?—I do not see how any change can be made, unless you go down to the lowest scale, where any one man has control over another.

1356. You see no hardship in a case where a guard and a number of passengers are killed by the same catastrophe, and the passengers, their relatives, or themselves, are compensated, and the guard gets nothing?—If I may be allowed to say so the circumstances are entirely different; the passenger contracts with the railway company, and the railway company knows perfectly well the responsibility they take towards that passenger in conveying him; and in the case of a default of a servant, or their own default, they are liable to give compensation. In the case of a railway servant, he enters the service knowing perfectly well the terms on which he enters; and I agree with Mr. Findlay that the men, according to their duty, and the risk they run, to a certain extent dictate their own pay; I mean to say that a good man taking the position of a shunter, or an engine-driver, naturally gets much higher pay, not only from his qualifications, but also from the risk he runs. I think the circumstances of a passenger and a railway servant are quite different.

1357. And their treatment is quite different?—That, of course, you are aware of.

1358. And you think that that is right as it stands?—If the law is altered, the relation between the railway company and the servant must be altered in a certain degree, possibly with regard to their wages, certainly with regard to the assistance which the companies now give to the railway servants. I speak of the Great Western. At the present moment the Great Western are paying about 6,000 *l.* a year towards provident funds and superannuation funds, and so on; also, at this very moment, we are in negotiation with the men for an extension of their superannuation fund, sick fund, and widows' and orphans' fund, which will probably entail a further outlay of at least

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Mr. *Grierson.*

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Chairman—continued.

least 3,000*l.* a year, possibly 4,000*l.* a year. It can scarcely be expected that the directors or the shareholders would voluntarily continue a contribution of 10,000*l.* a year, and still have to pay their servants compensation, which they have not to do at the present moment. The men would have to take that also into consideration, whether it would be desirable that the whole body of men should lose great advantages for the benefit of a certain number who meet with accidents. As a matter of course, at the present moment, every man entering the service, being bound to join the provident fund (and if it is carried out he will also be bound to join the superannuation fund), would get a benefit either in the case of sickness, or at the end of a certain period. If the companies are bound to compensate their servants for the accidents caused by negligence of some of their fellow servants, then, if the directors withdraw their subscriptions to those funds, all those persons who are not injured will suffer.

1359. You are of opinion that if the companies were bound to compensate their servants for their negligence, the companies would withdraw their subscriptions?—I think it quite natural.

1360. And you think they would?—I think it extremely possible that they would.

Sir *Daniel Gooch.*

1361. If the general manager of a railway is taken out of the category of common employment, do you think it would really be of any benefit to the men, the connection of the general manager with the men generally being so very slight?—I endeavoured to explain that, even suppose you were to alter the law so as to bring in the general manager as responsible for the company, and the company for his acts, in the case I have stated of a signalman or a shunter making a mistake and causing an accident, the man injured would not receive compensation.

Sir *Daniel Gooch*—continued.

1362. In fact, the duties of the general manager are to lay down in printed rules and printed forms (it is done by the chief officers and directors of the company) a code of regulations and laws to govern all these different establishments over the whole system?—That is so; and as you know, upon the Great Western line, those regulations for the conduct of the men individually are given to them in writing; the signalmen and shunters and the other people have their instructions given to them in writing; therefore that brings it down at once to the inspector who gives those instructions, and removes it from the manager, because those which he issues are laid down by the general regulations of the company.

1363. There is nothing between the general manager and these men outside of the written instructions?—Nothing.

1364. And the manager can hardly give any order that would bring him within the category of a man responsible?—He would not, because the accidents which arise to servants are to a large extent from their own fault, partly from the default of a fellow servant; and therefore it is from parties locally connected that the accident arises.

1365. Do you know anything of the cost of managing these Great Western societies?—For about 1*l.* of benefit that the men get the Provident society costs 1*s.* 7*d.* In the Locomotive Provident Society it is about 6*d.* for each pound given of benefit. In the Railway Servants' Association, of which Mr. Evans is secretary, I think it is about 1*l.* 15*s.* for every pound they pay.

1366. So that, in point of fact, the men get considerable benefit from having the society managed by themselves in connection with the company?—They get considerable benefit from their connection with the company, under the present circumstances.

Mr. Henry Oakley, called in; and Examined.

Mr. *Oakley.*

Chairman.

1367. What is your position?—I am the General Manager of the Great Northern Railway.

1368. Have you anything that you would like to state to the Committee?—I think I can be very brief. I have heard the evidence of Mr. Findlay, and Mr. Grierson, and I entirely agree in the views they have expressed, so far as the Great Northern Railway Company is concerned. I am certainly disposed to state most emphatically that the extension of the liability of the company, by making them responsible for the acts of their general manager, in the case of accidents to their servants, would really be no practical benefit to the servants, because the orders of the general manager are never given directly to the men engaged in the work; they are conveyed to the heads of the respective departments, to the superintendent of the line for the working of the passenger traffic and the general conduct of that part of the business, to the goods manager for his department, to the engineer of the line for his, and to the locomotive engineer for the locomotive department.

1369. And to the stationmaster?—No, the stationmaster would receive his instructions from

Chairman—continued.

the department concerned; the superintendent dealing with the passenger traffic, and the goods manager dealing with the goods.

1370. The result of it would be that if we want to give any efficient liability we must descend to these different officers?—Yes; you must descend not only to these different officers but very far below them, because, as Mr. Grierson very properly put it, over an area of 1,500 miles it is impossible that any one officer can give personal instructions to all classes of the staff at every place; they must be transmitted to the resident authorities at each spot, and by them again transferred to those actually engaged in carrying them out. To follow it through, for a moment, at a particular place, say Peterborough, for example, which is a large station, the superintendent would send, in the case of passenger work, to the district agent, to direct that certain work should be done at Peterborough; that agent has, say 50 or 60 miles of line to look after; he would go to Peterborough and give directions to the man in charge there what should be done. That may involve work during the whole 24 hours; the latter would therefore have to depute it again to the inspector on duty in the day, and to another for the

Chairman—continued.

the night work, and they again probably to the signalman, or to the foreman. So that before the order could get down to the actual porter or shunter, employed in doing the work of marshalling or breaking up a train, it would have to to pass through all those hands, and the authority would be delegated, say through at least half a dozen people. The effect, therefore, of extending the liability of the company to the manager, would not have any real practical value.

1371. It must be carried much further?—It must be carried much further, and be carried to a class of men who are beyond question fellow workmen carrying out the same employment.

1372. But the judges have made you all fellow workmen now; you are a fellow workman with the shunters?—No doubt, so we all are; and the concern must be taken as one united whole. No part of our work could be carried out except with the concurrent action of every department. The engineer must keep his road in order; the locomotive engineer his engines and rolling stock; the traffic man must instruct the signal men, and foremen, and porters; and unless they were all instructed and all in good order, the work could not be done. Common employment is, perhaps, rather a hackneyed term; it only, in our case, means employment for one common object, that is to get the train or the goods safely from one part of the line to the other.

Mr. *Walter Stanhope.*

1373. Do you consider that the railway servants, who incur greater risks than the others, are paid higher wages in consequence of that risk?—Yes, no doubt, the greater the risk the higher the wages they are paid. We will take the class which has been suggested by one honourable Member, that of shunter. The duty of a shunter is really very little more than a porter's work; he is required to be a little more skilful, and he is generally a selected porter, and his wages (the ordinary wages of a porter being from 18 *s.* to 21 *s.* a week), are from 23 *s.* to 28 *s.* a week, the hours of duty being the same.

1374. Is there the same difference between a skilled mechanic in a shop and an engine-driver, when their occupation is about equal in point of skill?—No, there is not the same difference of wages there; but there is a another reason for the difference between the wages of those two men. The workman in a shop is apprenticed; he has to spend several years of his life in learning his business, and gets little or no pay during the time he learns it. The driver, on the other hand, begins as a cleaner, and gets labourers' wages when he begins; then he becomes a fireman after a certain number of years, and his wages are improved; then when he first of all is a driver it is in a yard at 5 *s.* a day, then a goods driver at 6 *s.* a day, and eventually a passenger driver at 7 *s.* or 8 *s.* a day. So that the relation of the wages between those of an experienced mechanic and a driver is different from that between those of an ordinary porter and a shunter. We educate them in one case; in the other case the man educates himself.

Mr. *Knowles.*

1375. With reference to the guards, do they not get extra pay in proportion to the risk they run, comparing them with that class of men engaged in other employments?—In proportion to the risk as well as other elements, the guard is not paid higher merely because his life is in greater danger from his duty, but because he is a man specially apt for the duties he has to perform. A man may be an uncommonly good goods guard, but never be a good passenger guard; he has not the *savoir faire*, the ability to deal with the public: and all those qualifications form elements in settling the rate of wages of each.

Mr. *Knowles*—continued.

1376. But assuming that the guard was employed at any thing else except as a goods guard or passenger guard, anything that that class of man could do, would he get the same amount of pay?—No, certainly not. All the leading men are recruited almost invariably from the porter class; men who come in as porters may rise to be shunters, inspectors, foremen, superior foremen, goods guards, passenger guards, inspectors of stations; and we have men in our service who have risen to very good positions indeed from the lowest ranks.

1377. Do you think it would not be prejudicial to those men themselves very frequently if they had to be led into litigation with their employers for injuries received?—It would be prejudicial to the whole as a body; but the difficulty that we see is, that if the liability is extended to delegated authority, we should be in perpetual difficulties with our men, disputing with them, in fact, as to the alleged liability of the company. As a whole, I believe it would do harm, because without putting it at all too high, I think all the large railway companies do exercise a sort of parental care over their men. We, for example, have a superannuation fund and a sick fund, and for every pound that the men put down for superannuation the directors put down another; and they borrow the whole money of that fund at 4 per cent. interest; they charge nothing whatever for the management; in our sick fund, the whole of the management costs are defrayed by the company; and in the case of a man being injured on duty we always make up the difference between his sick pay and his full pay; so that he receives full wages all the time he is laid aside in consequence of any injury.

1378. We will suppose the case of a man likely to get preferment, being an active man, and he met with an accident, and the company were sued at the dictate of the trades' union for compensation; is it a likely thing that the company would be induced to promote him when he gets well as fast as another man?—No; I answer the question simply by saying that the moment he came in litigation with the company he would cease to be a servant.

1379. So that this proposed change would be prejudicial to the man?—Yes; it would to the man. He might get a few pounds for the injury, bnt he would lose his employment, and the advantage he had gained by his length of service.

Sir *Daniel Gooch.*

1380. The wages paid to an engineman go up to about 8 *s.* a day?—Yes.

1381. The wages paid to the mechanics who are skilled mechanics are considerably short of 8 *s.* a day; are they not?—In London they are about 6 *s.* 6 *d.*

1382. Therefore though the engineman is not so well skilled a man, yet he is paid that additional pay in consequence of the risk he runs in performing his duty?—The risk forms an ele-

Mr. *Oakley.*

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Sir *Daniel Gooch*—continued.

ment in it. You can hardly say that it is solely in consequence of that.

1383. It is taken into account?—It is taken into account.

1384. But you do not pay an engineman, working a factory engine, 8*s.* a day?—No.

1385. You pay him 5*s.* or 6*s.* a day?—Yes, it is undoubtedly so.

1385. The risk is included in the wages?—Undoubtedly.

Mr. *Hopwood.*

1387. Did I rightly understand you to say that if there was any alteration in the law making the head of all departments responsible, or rather making the railway company responsible for the acts of the heads of departments, practically that would have no effect, in so far as giving the workman injured any remedy?—Yes.

1388. Because you say that the orders do not come direct from the heads of the department, but are filtered through several channels before they arrive at the servant who carries them out?—Unavoidably so in consequence of the dissemination of the staff through the country.

1389. Supposing the law were altered so as to make the heads of departments responsible, I do not see in that case what objection you would have to it?—In the first place, I think it is wrong in principle; we undoubtedly are all, from the top to the bottom, fellow workers to the same

Mr. *Hopwood*—continued.

end: and if the liability is to be extended to include one of the fellow workers, it seems extremely probable that it must be extended to include others; and unless you do include others you are neither logical nor practical.

1390. It might be held that the persons to whom the authority was immediately delegated stood in the position of actual master, and your opinion is, that if we did go to the extent of enabling the men to recover for the acts of heads of departments it would give the men no practical remedy?—Certainly, I say that; and I think you could not stop there entirely, as in my opinion; it would give them no practical remedy, and it would be an unwise thing to start, because it would do no good, and it may eventually lead to considerable harm.

1391. Would not exactly the same objection apply to other large trading concerns as well as railways?—I should speak modestly about that, because I do not know the detailed working of other large trading concerns; I do understand railways.

1392. You would know that it is impossible for the head manager personally to give direct orders?—Yes. Take large works like Cannell's or Brown's at Sheffield; they have each of them half a dozen managers, I should think.

1393. Then the same argument would apply to all large concerns?—It appears to me so.

1394. Only in a less degree?—Yes.

Friday, 11*th May* 1877.

MEMBERS PRESENT:

Mr. Attorney General.	Mr. Lowe.
Mr. Bulwer.	Mr. Macdonald.
Mr. Gibson.	Mr. Meldon.
Sir Daniel Gooch.	Mr. Ripley.
Mr. Hopwood.	Mr. Eustace Smith.
Mr. Knowles.	Mr. Tennant.
Mr. Shaw Lefevre.	Mr. Wyndham.

THE RIGHT HON. ROBERT LOWE, IN THE CHAIR.

Mr. ROBERT HEATH (a Member of the House), Examined.

Mr. *R. Heath*, M.P.

11 May 1877.

Chairman.

1395. WHAT are you?—I am a Colliery Proprietor, and an Iron Master in North Staffordshire.

1396. What part of North Staffordshire?—The extreme of North Staffordshire, called Biddulph.

1397. You are aware of the question that is referred to this Committee?—Yes.

1398. Have you any statement you would like to make?—Yes, I have some memoranda from which I wish to make a statement.

1399. Will you have the kindness to state your views on the subject?—In the first place I will say that I am the Manager of the Biddulph Valley and Norton Ironworks in North Staffordshire, employing at the present time about 4,000 men; when trade is rather different, perhaps I employ very nearly 6,000. I have read over some of the evidence given before this Committee, and more particularly the evidence of Lord Justice Bramwell, and with his evidence I generally concur, namely, that if an employer employs a proper and efficient manager, I consider that the responsibility of the employer should cease.

1400. That was what you gathered to be Lord Justice Bramwell's opinion?—That was what I gathered to be the nature of Lord Justice Bramwell's evidence, not in words but in substance.

1401. Did you observe that he threw out a suggestion that the employer might be liable for the defect of the manager; that it might be right to make the master liable for the negligence of his manager?—If any culpable negligence of his manager had been brought to his knowledge.

1402. Negligence, without its being brought to his knowledge. Did you not observe that he said that?—No, I did not; I think if the law was extended beyond that, the iron trade being such an important trade, and such a variety of managers having to be employed in connection with it, an employer would scarcely be able to form any opinion as to what his responsibility would be; and I believe the present law is sufficient for the protection of the workmen from any wilful or culpable neglect on the part of the manager. The rate of wages paid in the ironworks is such, that that is some consideration for the risk that a man runs. It is well known that in the ironworks men are paid very high rates of wages, and at the present time very many are receiving, I should say, 15 *s.* a day, and some upwards. Speaking from my practical experience, I find that the accidents, simply in ironworks, are accidents that generally arise from the carelessness of the men themselves, by pouring perhaps hot iron or hot cinders in some wet situation where you get an explosion from a portion of the cinder not being in a sufficiently solidified state, and men get burnt in consequence. Another very frequent cause of accidents is where men get injured from the sparks which fly from the hammer, none of which, of course, are under the control of the employer or of the direct manager, because no person can possibly protect the man but the man himself. The accidents from machinery are very few in the ironworks; and I consider that any legislation that could possibly make the men more careful of themselves would tend more to prevent accidents than any care that the manager in charge could possibly take of them.

Chairman—continued.

1403. What legislation do you contemplate; what do you allude to?—If, for instance, a man was more punished for the injury done to a fellow workman by his own wilful carelessness. At the present time I do not know what means we could take unless the man was to bring an action against him for damages, which fellow workmen are very reluctant to do; I do not know what other legislation there could be, unless a man were made liable for it where a man had been guilty of gross carelessness.

1404. But would you suggest that carelessness should be made an offence and punished in some way?—Punished in some way; if a man in some gross carelessness injured his fellow workman, if he were punished either by payment of money or imprisonment, I think it would have a tendency to make men more careful.

1405. Would you limit that to workmen. Suppose I am guilty of gross negligence in driving

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Chairman—continued.

driving my carriage, would you not punish me in the same way?—You would be punishable by a fine.

1406. Not criminally; you propose to make it a criminal offence in this case?—I believe that to punish by the payment of money might be as great an advantage; but in the one case the money might not be recoverable; in your case the money would be recoverable.

1407. Will you let us clearly understand what it is you propose; is it that the workman should be criminally or civilly liable?—I think that if he is civilly liable it it is quite satisfactory to me, if there are any means by which you can get from him the amount of money which he is fixed with by the liability.

1408. Is he not civilly liable now?—I think it would be a difficult matter to prove that he is.

1409. What is there to prevent it?—I never knew a case brought and tried.

1410. Because there is nothing to be got, I suppose?—No, I do not suppose there is. If the law were made a little more strict in that respect, I think it would be an advantage.

1411. Your suggestion is, that he should be civilly liable?—Yes.

1412. He is so now, is he not?—Then in default he ought to be subject to a further punishment.

1413. That is criminally liable?—In default.

1414. If he could not pay?—If he could not or would not pay.

1415. What ought there to happen to him?—I think he ought to be punished, as men are punished for offences that are not, perhaps, of so serious a character as the offence might be to which we refer.

1416. Is there any instance in the law of England of a person who is civilly liable for something, and who cannot pay, being punished because he cannot pay?—I am not aware of that.

1417. You would make a change in the law, and mix up the civil and criminal together?—If any alteration in the law is made (as for as it goes I am satisfied with it myself), I think that would have a more salutary effect. I consider that if the law was altered, as suggested by the Bill, it would create a constant litigation betwixt employers and employed for damages, which would have anything but a beneficial effect upon the trade generally, or the interests of the workmen generally, or upon the individual injured; because the master, instead of applying the money which employers now use for such purposes, to assist where a man unfortunately gets an accident, would have to take care of himself by applying the money that he might use for the benefit of the injured man, for the purposes of litigation, for the purposes of his own protection. We have now in most large works institutions not only for the assisting of a man who gets an accident, but likewise for giving assistance in all cases of sickness, providing him with a surgeon, &c., anything that he may require during the time of his sickness; and I think that a great assistance is given in that way by the employers generally; and I think that if a master had to protect himself by the law he would have to use his money for his protection rather than for the benefit of his workmen. I might say that I represent here what is called the British Iron Trade Association, and likewise the Mines' Association of Great Britain; but my remarks have not referred particularly to mining, because I have understood that you have had evidence on that point before.

Chairman—continued.

1418. Your evidence is principally with regard to iron works above ground?—My evidence is particularly with reference to the iron works.

1419. Is there anything else that you wish to say?—No.

Mr. *Knowles.*

1420. The Chairman put this question to you; if he himself was driving his carriage and injured anybody, he would then be liable. He gave you that as the law as it stands. That is so, no doubt; but do you suppose it would be right to make him liable for his coachman's act, if his coachman injured his footman through his negligence?—No, I do not think it would at all.

1421. You think the coachman ought to be liable, if there is a liability that attaches?—I think the footman, who generally sits by the side of the coachman, should tend to keep the man out of danger. He would be held contributory, I should say, if sitting by his side he did not prevent him.

1422. If the law was altered, do you not think that the workman who causes an injury to his fellow workman ought, in the first instance, to be responsible, he being the immediate wrongdoer?—I think I have so stated.

1423. Something was said about the workmen being liable "if they had any means," and the inference was, that they never had. Do you find that they never have?—My inference was, that we should not be able to get it from the workmen, but we might from the owner, if he were responsible.

1424. Do you find all your workmen without means?—No.

1425. Do you not find some workmen that have saved some money?—Yes.

1426. Is it not the interest now of all employers to get the best managers they can?—Yes, it is indeed.

1427. If they get negligent managers, and if anybody is injured in consequence, does it not often destroy a great deal of the master's property?—I think if a man employs bad or negligent managers in any way, it would be very ridiculous for him to look for a balance at the end of the year. I think the best managers are the most economical.

1428. Is it not his interest to take all care, and make all due provision for the safety of his men that he can?—Yes.

1429. Of course, without the safety of those men, his capital would be worth nothing?—Of course employing the number of men that I employ, I am dependent upon my managers. If I did not employ a competent manager, I should not expect to get in a favourable result at the end of the year when I came to balance; it could not possibly be so.

Mr. *Bulwer.*

1430. The law is undoubted, that if two workmen A and B are under one employment, and A injures B by his negligence, A is liable to B for the injury that he has inflicted on B; there is no doubt about that. There are also cases in which a man is liable who has committed no fault at all,

as

Mr. *Bulwer*—continued.

as for instance, in the case of your sending your carriage, not going in yourself, but sending your carriage to fetch from the railway a friend who is going to visit your house, and an accident happening. You, I understand, do not wish to extend those anomalies, to make a man liable who has done no wrong at all?—Certainly not, I think, if a man has done no wrong.

1431. That anomaly does exist in our law, namely, in the case which I have just put; that you, sitting at home in your drawing-room, tell your coachman to drive to the railway station to fetch a friend; your coachman on the road is negligent, and drives over somebody; you are liable in that case, though you have done no wrong whatever?—Yes.

1432. You do not wish to extend that liability further, and to make the master liable for the negligent act of one servant to a fellow-servant?—No, certainly not, unless it can be positively brought home to the defect of the man himself.

1433. I assume that it cannot, and that he has done everything to ensure the employment of skilful workmen, as far as he can; I understand you to say that supposing A brings his action against B, they being fellow-workmen, if B can pay and will not pay, some further pressure ought to be put upon him in some way or other?—Yes, I should think so. I think that it would tend to diminish accidents very frequenty if a man was made more responsible for his own acts.

1434. But that would come to making a man's negligence criminal if you punished it?—Yes.

1435. How do you mean; that you would liken it to the case where magistrates have the power of imposing a fine, and in default of payment to send the man to prison?—I should not be an advocate for sending the man to prison unless there was some wilful and gross carelessness on his part.

1436. Then, of course, he would be punishable under the law as it is?—Unless it was wilful and gross carelessness on his part, I would not punish him. If a man was guilty of wilful and gross negligence, if it produced death, he would, of course, be punishable. If it produced merely a temporary injury. I do not know whether he would be punishable criminally, I am not prepared to say. If it produced death he would.

1437. Of course, he is punishable criminally now where his negligence is wilful, and causes death?—Yes.

Mr. *Ripley*.

1438. As having the management of large ironworks, it comes within your knowledge that very frequent, almost daily accidents happen in ironworks; in puddling furnaces, and in various ways they are very frequent, in point of fact?—Slight accidents.

1439. Accidents varying, more or less, in importance?—Yes.

1440. Do I gather that it is your opinion that the great majority of these accidents occur through the carelessness and neglect of the workmen themselves?—I believe the greatest number of accidents that have happened in my works have been the result of men being burnt from a spark from the hammer, or from throwing over a tap-waggon; that is a waggon containing the hot cinders from the surface; before it is solidified, sometimes a man carelessly throws it over where there is some water about, and that causes an explosion.

Mr. *Ripley*—continued.

1441. Do I correctly gather that, in your opinion, these accidents would very materially increase if all responsibility was taken away from the workmen, and the onus thrown upon the employers of labour; that they would feel it was a matter of indifference whether they damaged themselves or each other, provided they could fall back on the employer?—It certainly would not increase the care of the workmen, and it would probably diminish it.

1442. Is it not probable that it would very materially diminish the workman's care?—I think it would tend very much to diminish the workman's care if the master was responsible for every accident.

1443. I think I understood you to state that in your own works (and no doubt you have some knowledge of the same plans existing in other works) help is given in various ways by the owners of the works in case of accidents, whether they feel that the responsibity rests upon themselves, or not; I mean providing surgeons, and all that sort of thing?—Yes.

1444. In the event of all responsibility being taken away from the workmen, and the owners of the works being liable to proceedings for accidents by these workmen, do you think that legislation of that kind would tend to increase the kindly feeling which exists at present between the employer and his workmen, and increase the help which is given voluntarily by the masters in many cases?—I think it would tend to diminish the good feeling that exists between master and servant very much if such an enactment was to be passed. And with regard to the provision that is made for cases of accident, I happen to have with me some statistics from my own works. I brought them up here for the purpose of making use of them in regard to some evidence about the Friendly Societies Act. We have an institution at my different works, and I find that this assistance was given in various ways in 1874 to the sick; not to cases of accidents only. You will understand that this is a provision for sickness; it was payment to doctors and so on; 2,499 *l.* were dispensed in my works in 1874 for that. Those institutions are connected with my works only; and those are institutions managed by the men themselves; but they make a monthly contribution and it is dispensed for sickness, and also accidents, and for the provision of doctors with a supplementary fund which is provided by myself, from which the committee give to any case of need, whatever case of need it may be, money in their discretion.

1445. I understand, generally, that it is your opinion that it would be a great mistake to alter the law in such a way that workmen should be relieved from that care which is thrown upon them in carrying on common employment which exists at present?—I believe it would be a great mistake.

Mr. *Macdonald*.

1446. I think you said that you agreed with Lord Justice Bramwell in his evidence?—Yes, I do, generally.

1447. If Lord Justice Bramwell as stated in any part of his evidence that he thinks the owner should be responsible for a vice-master, would you agree with that?—No, I did not read his evidence to say so; unless the master had

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appointed some vice-manager who was very incompetent to do his work, but the evidence that I have read is not, perhaps, altogether the evidence as printed for your Committee.

1448. If Lord Justice Bramwell has said that an owner should be responsible for a manager employing an unskilled workman who causes an injury to his fellow workman, would you agree with Lord Justice Bramwell?—No, certainly not. It is the law now that he would be liable if he employed somebody that was unskilled and incompetent to do the work he was put to. I say the manager would be liable now in that case.

1449. Lord Justice Bramwell gives this illustration: "You put a particular case which comes to this, that a person puts a dangerous implement into the hands of an unskilled person, which does mischief; I should be very much inclined to say, whether he was a master or anybody else, that I would make him pay for the consequences;" would you agree with that?—No. I believe the law at present is such that if a master employs an incompetent manager or an incompetent man to fulfil a particular duty that he is put to, and it is known that he is incompetent, the master or manager would be liable now under the present law.

1450. You stated that you would make the workmen responsible in some other way than at present, if they were guilty of negligence. I could not understand exactly what you said; what other way do you contemplate?—In case of wilful negligence on the part of the workman, the law would make him liable now. I am not prepared sufficiently with a statement of the law to say whether it would, or would not; but I suppose it would in the case of wilful carelessness.

1451. If the manager was to do the same wilful act, or the employer was to be guilty of some wilful negligence, as you contemplate one workman being guilty of to another, would you apply the same law?—He himself would be liable for his act if his act were careless or wilful; he would be equally liable with the men themselves; I would not exempt him because he was a manager or master.

1452. You would make the law equal?—As between an agent or a deputy and a man, if the person was guilty of any negligence, or wilful carelessness, and not doing something which he ought to have done, the person himself would be guilty. In case of death, I suppose he would be amenable to a verdict of manslaughter.

1453. That applies to workmen now, does it not?—I suppose so.

1454. Then you have no change to propose?—No, I am satisfied with the law as it stands.

1455. I understood you to propose a change?—No, I do not wish a change.

1456. You say that you think that if any alteration is made it would lessen the responsibility of the workmen, and do an injury to them?—I think it would lessen the responsibility of the workmen, and cause accidents to be more frequent.

1457. Is it your opinion, after long experience, that workmen would, for a paltry sum that would be awarded to them by a jury, risk their limbs and their life for the purpose of getting compensation from their employers?—I know that men are very careless now of their own life, and likewise very frequently the lives of their fellow workmen, and I mean to say that if they were to be compensated for it, I do not think that would make them more careful.

1458. Is it the result of your experience that men would risk their lives?—I think a man would not risk his life knowingly; he might risk his life from some careless act but would not risk his life knowingly. I do not think a man would run into a danger where he would expect to be killed.

1459. You think that the iron works and the mines of this country are very well managed now, as I gather from your remarks?—Yes, I should say they are generally.

1460. Do you think that the managers, as a rule, are reckless men?—No, I do not think they are.

1461. Do you think they have no regard for human life?—I think they have regard for human life.

1462. Then if they have regard for human life and are not reckless, what cause of alarm have you as to extending the law, so that the owner should be responsible for the manager?—I think the law goes quite sufficiently far. I have an objection to the extension of the law, believing that it goes sufficiently far now.

1463. I am asking what ground you have for considering that there would be more accidents if the managers do all they can now?—My evidence has gone to show that the accident does not often rest with the manager; it rests more with the men themselves; I do not say entirely, but generally.

1464. If it rests chiefly with the men themselves, what injury would the owner sustain?—The workman would be less careful of himself and others, because the compensation would not be only to himself but likewise to others, perhaps not to himself but to others.

1465. But I am asking the question, if the managers are now careful, what injury would be sustained by extending the law that the owner should be responsible for his manager?—I think the law goes sufficiently far, and I think that managers are generally careful from the fact that if an accident was to happen, it does not often happen that it injures life only, but it often injures property; and therefore if an accident happened from carelessness, I think the manager would very likely get his discharge pretty promptly; and therefore that alone would make him careful if he valued the situation.

1466. Are you satisfied with the present law as it affects the railway companies' liability to the passengers?—I have had no experience of railways.

1467. Do you know anything of railway accidents?—I do not hold a railway share and am not a railway director, and I have fortunately never been in a railway accident.

1468. I hope you never will be; at the same time let me ask you this; do you think that the law of compensation, as applied to railway companies at the present time, has a salutary effect in making them careful or otherwise?—I think the railway companies now are generally careful, and I think that the discipline that they obtain is almost beyond what one should expect they could possibly obtain; it seems to me marvellous that a train goes from London to Edinburgh as they go now without an accident; because when you come to consider the number of points at which

Mr. *Macdonald*—continued.

which the slightest carelessness would cause an accident, I think it is marvellous that there are so few accidents. I am not astonished at the number, but that there are so few.

1469. Do you not think that the law of compensation has a salutary effect in making them careful?—I dare say it has that effect. I cannot suppose that it has not, and it is not only the compensation they have to pay to the injured, but it is also the cost that it takes to repair their injured property.

1470. Then you agree with me, that the law of compensation has a salutary effect upon them?—I think it has.

1471. It has a tendency to create care?—No doubt it creates care in railway companies. There are a variety of reasons why the railway companies would take care, not only taking care of their own property and the lives of the people, but accidents interfere with the regulation of all their business and traffic arrangements, and the consequences are very serious.

1472. Do you see any reason why, if that liability to pay compensation was extended to employers with regard to workmen, it would not have a similar effect, and make employers more careful?—I believe the railway companies would adopt, whether they were liable or not, every precaution that they possibly could for the benefit of business, and the regulation of their own business; and I believe that any extension of the law would rather tend to cause accidents than diminish them; and it would create a very bad feeling betwixt master and servant, because we should be in constant litigation on every trifling case.

1473. I think you stated that a large sum of money was contributed by you for some purpose, I could not hear what?—Our sick and accident fund, which we have generally in the works; merely an ordinary sick fund.

1474. Do the men contribute to that fund?—Yes, they do.

1475. Do the employers contribute to it largely?—Yes.

1476. Do you see any reason why the owner should not be responsible for the manager of his works?—Yes, I see strong reasons why he should not be responsible. If a man appoints the best managers he can obtain, I think his responsibility ought to end.

1477. Are you aware that if an employer manages a work himself he is responsible for every act that he does or orders?—Any act of carelessness.

1478. Any act that he orders?—Any act of carelessness, of course, he would be responsible for; not accidents that were purely accidental.

1479. You are aware of that?—Yes.

1480. And is there any reason why, when he delegates that duty to another, he should not be responsible for that other person?—He is responsible now in case of wilful or gross carelessness, which alone would make a master responsible.

1481. Is he responsible now for the act of his manager?—For wilful and gross carelessness, supposing the master knows the man has been guilty of some negligence or offence and does not take measures to repair it.

Mr. *Tennant*.

1482. From your answer to the last question I gather that you really do agree with Lord

Mr. *Tennant*—continued.

Justice Bramwell that a master should be responsible for the acts of his managers when they arise from carelessness on the part of managers?—From gross carelessness or default; if a master has employed an incompetent man to superintend his works and represent himself, of course, if that incompetency is known to the master, he would be equally guilty.

1483. Supposing he employed a competent man, and one admitted to be a competent manager, but still, through some careless order of his, a servant was injured, do you think that the master is now liable for that, or ought to be liable in the future?—I do not think the liability ought to be extended.

1484. Do you think that the master ought to be responsible in such a case?—No, I think not; I think the liability ought not to be extended.

1485. I know your works are very large and you have to employ managers?—Of course.

1486. But assuming that your works were not quite so large, and that you could manage them yourself, do you see any reason why, in the one case, you should be responsible, and in the other, not?—A man cannot manage an ironworks himself, because they work night and day, and therefore he wants management nights as well as days.

1487. Supposing that you were the manager of your own works, either in the night or the day, do you think it is right that one law should apply to night and another to day?—I think the master is liable if he is guilty of gross carelessness, and I think the same liability would extend, supposing it was proved that his agent had been guilty of gross carelessness, if the master had any cognizance of it; but it would not be reasonable that the master should be responsible for the carelessness of a manager, because you might as well make me liable if my manager commits an assault from bad temper, or anything of that sort.

1488. Supposing your coachman at this moment drives over and maims a man, you are responsible, though the act was a reckless act on the part of the coachman?—But I should not be liable for the man supposing he committed an assault.

1489. I do not care whether you call it an assault, or not; supposing he knocks him down with the coach, you are liable?—That would not be an assault: it would be a damage in another shape. Perhaps the injury might be as great, or greater, but the crime would not be the same.

1490. But as I understand you, you do not advocate that the workmen should be made responsible, otherwise than in damages for acts done to fellow workmen; but if any change is made in the law, you think there should be some remedy against the workmen?—I think it would make the men more cautious; not that I am anxious to have the law altered; but I believe that if it were altered in that respect it would diminish accidents, whereas if it were altered in the other way it might increase them.

1491. You did not mean that the fellow workman was to be made criminally responsible in case he could not pay any damages awarded against him?—No: I said that if a man had committed some offence wilfully, he ought to be punished, and would be punished at the present time.

1492. Supposing a man did a wilful act and damaged

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damaged a fellow workman, and supposing the man had no money to make his fellow workman compensation, do you mean then that the man should be put in prison?—No, not unless he had been guilty of something very wilful.

1493. In point of fact, you would be satisfied to let the law remain as it is?—I think so.

1494. You do not think that there should be any sort of difference made whether a man manages his own works, or does not?—I do not see myself where the law could be altered to advantage, either to the workmen or to the master; I think the law is sufficiently stringent.

1495. I think you have said that a great number of the accidents that do occur are attributable to the negligence of fellow-workmen, in the ordinary sense of that term?—Well, very frequently they are, from the negligence of fellow-workmen.

1496. Do you, in your experience, remember any accidents that were directly attributable to the orders of the manager?—The most serious accidents I have ever known in my own works have resulted from an explosion from a tap; an ironmaster would know what I mean by a tap; a lot of liquid cinders running in an iron box being thrown over carelessly in a wet place, and causing an explosion. I have known a few deaths to be caused, and several people to be blinded by that.

1497. But do you know any cases of accidents arising to a workman through the direct orders of a manager?—No; I have no recollection of any.

1498. Then, so far as you are concerned and your works are concerned, if the law had been altered so as to make you responsible for the direct orders of your manager, it would not have made the slightest difference to you pecuniarly?—I should say it would cause very many cases to be raised, trying to prove the responsibility in some way; but I do not know that I have ever had any case where an accident has happened that has been directly attributable to the negligence of any manager.

1499. Then it would not, in fact, have affected you at all if the law had been altered?—I think the law now is such that if there was a case of negligence on the part of my manager, and if it were proved to be negligence, I should have to be responsible then according to the law.

1500. You are quite mistaken; that is not the law?—If that negligence had been made known to me; if it could be brought home to me.

1501. That is your opinion, that that is what is right, whether it is the law or not?—I mean to say that if any negligence in my manager has been brought to my knowledge, and I have not taken means to redress it, in the case of any accident happening in consequence of the negligence of that manager, I think the law would make me liable for it now.

1502. How can it be brought to your knowledge; a man cannot be negligent before he has been negligent?—I do not think that I should be responsible for any misconduct in any shape or way of a man whose misconduct has never been brought to my knowledge.

1503. Previously brought to your knowledge, do you mean?—Yes, previously brought to my knowledge.

Chairman.

1504. Then it would be your own negligence?—In that case I should be guilty, according as I understand the law now.

Chairman—continued.

1505. You would not be responsible then for the manager's negligence, but for your own negligence?—Yes.

Mr. *Knowles.*

1506. You have been asked if the law had been altered, whether it would have made any difference in your case, because there has been no case of your manager's negligence; but do you not suppose that there would have been a greater risk of your being sued for compensation, and the men trying to make out neglect if the law had been altered?—I have no doubt there would be trials to make me liable in every accident that happened. I should expect that. I cannot say that it would take place, but I should expect to have cases of litigation innumerable from almost every accident that might happen.

1507. As regards masters managing their own business in the iron trade, do you think there are many in the whole of the iron trade that absolutely do manage their own business?—I should think very few; it must be a very small works indeed where they do; it goes on night and day, commencing on Monday morning till Saturday afternoon.

1508. If the master manages the commercial part, is it possible he could do without managers for the practical part?—No, I think not.

1509. Speaking now of collieries, is it your opinion that the cases in the coal trade where the masters manage their own business are quite the exception?—I think quite the exception.

Mr. *Bulwer.*

1510. You have been asked a great number of questions about the law; you do not profess to have an intimate acquaintance with the law of master and servant?—No, I do not.

1511. The word "wilful" has been used by yourself, and in some of the questions put to you, but quite erroneously as regards the law. For instance, are you aware of this, that if your servant deliberately and wilfully drives your carriage over a man in the road you are not civilly liable; are you aware of that?—Not if it was wilful; he would be punished then in another sense.

1512. You are liable for his negligence, but not for his wilful act?—Yes, just so.

Mr. *Hopwood.*

1513. You have used the phrase several times "wilful negligence." I presume you know that whatever is a wilful act becomes an act, in the law, of commission?—Yes.

1514. When you are speaking of negligence you mean omission?—Yes.

1515. And the two words, therefore, "wilful negligence" become inappropriately joined. By "wilful" do you mean in fact a gross act of negligence?—I meant to say this, that if a manager of mine had been guilty of negligence, I will not perhaps say wilful negligence, but gross negligence, brought to my knowledge, if I did not use the proper remonstrance, or take the proper care that an offence should not result from his negligence by dismissing him, I should be liable at the present time as I understand in compensation; not liable for his wilful act.

1516. Then, as the Chairman tells you, it would become your own negligence?—Yes, it would become my own.

1517. Because

Mr. *Hopwood*—continued.

1517. Because you would be negligently employing a person whom you knew to be incompetent for the work?—Yes.

1518. With regard to a manager, perhaps you know that the reason why an employer is absolved in respect of the acts of his manager producing injury to one of the workmen, is that the manager is a fellow servant in law; do you know that?—I am not exactly aware of the law.

1519. Do you consider that in any sense a manager can be a fellow servant with a man under him?—He is a fellow servant, being employed by the same master, of course.

1520. But would you, yourself, describe him so; is there not something which rather shocks your common sense in calling him a fellowservant?—I do not look upon my manager, of course, in the common sense as I look upon all the subordinate workmen; but I do not see that I ought to be guilty for his acts unless you can prove that I have been negligent, either in his appointment, or in requiring him to do his duty in a proper and efficient manner.

1521. Then, as I understand you, one great point for not extending the liability as is proposed is, that it would tend to make the workmen more careless in regard to one another and to themselves?—I think it would; it certainly would not tend to increase their care.

1522. Do you base that upon the supposition that they could get compensation from their master and would be likely to get full compensation?—Yes, if they could get compensation from their masters they would be less careful both for themselves and their fellow-workmen.

1523. That in fact they would feel insured against accidents?—Yes.

1524. What is the sick fund that they have; is that in the nature of an insurance against accident?—No, it is merely to relieve in the case of sickness and accident, the same as any ordinary sick club.

1525. Is not every workman who belongs to it aware that in case of accident he can apply to that fund?—Yes.

1526. Do you observe that it has any effect upon their carefulness?—I, at one time, was asked to discontinue my contribution to that, because some of my managers thought it really did increase the claim; that we should have some of our men attending their work more regularly if they had not sick pay; but I had not so strong a belief in the effect that as to discontinue it.

1527. You know some people insure themselves against railway and other accidents?—Yes.

1528. Have you observed whether, in your judgment, that produces a carelessness on their part? No; I never insured or met with an accident.

1529. You do not think a man would meet with an accident in order to get his insurance?—No.

Mr. *Ripley*.

1530. You have been asked whether you consider the managers of collieries and ironworks generally competent men, and you stated that you did consider them to be so?—Yes, as a rule; I should not employ a man unless I thought him competent.

1531. Is it so thoroughly in accord with common sense that any owner of a colliery or iron works will use his best endeavours to get the best managers possible; that it is reasonable to suppose that if these men are incompetent they are incompetent after the owners have taken the best means they can to get competent men?—Yes.

Mr. *Ripley*—continued.

1532. You were asked whether these men were careful of human life; is it not the fact that the manager and the sub-manager, and the viewers of a colliery are the men who have to go down first, and to go into the workings first, and that if these men are reckless of human life, it must be their own lives primarily which they are subjecting to the greatest amount of risk?—Yes.

1533. And therefore that they would use every care, as a rule, to protect themselves; and therefore it follows that the lives of the workmen are to a great extent protected?—I think their own lives would be risked with those of the workmen; that is the men who generally manage underground works, and likewise in iron works; because, unless they have competent men to manage their works in every department, they might have boiler explosions, and they run as great a risk as the men themselves of being killed. I do not think that any accident would respect the manager more than the men.

Mr. *Macdonald*.

1534. Is it the manager that goes down first into the mine in the morning?—Yes, the underground managers do.

1535. Is it the viewer that goes down first into the mine?—No, not the viewer; what we call the underground managers.

1536. Is it not the fire-tryer and the fire-tryer alone?—The fireman goes down, of course; and the underground manager. I require all my underground managers to be present in the morning the first thing, and go down with the men; they could not go down every pit every morning, but they go down some pit or other.

1537. Is it not the rule that the fire-tryer and the fire-tryer alone enters the mine first?—The underground manager is very often there as well.

1538. Is it not the special rule that the fire-tryer and the fire-tryer alone goes down first?—That does not show that the underground manager does not go down.

1539. Is it not the special rule that the fire-tryer alone goes into the mine?—Yes, it is.

1540. Then it is not correct that the manager goes into the mine first, the general manager of the mine?—No, not the general manager; the sub-manager.

1541. Is it not incorrect that the viewer goes down the mine first?—Let me explain the difference between what we would call a viewer and a sub-manager. I have, perhaps, a sub-manager in addition to the viewer to every two pits; he is there before the men go down in the morning; he goes down one of the two; he would not go down the same pit every morning; the fire-tryer or the man who examines the mine of course goes down, and the man goes and gets a report from him before the men go into the place at all.

1542. Is not the duty of examining the place imposed on the fire-tryer and the fire-tryer alone?—Yes.

1543. And if any other person went to examine the mine, would not they be committing a breach of the special rules?—Yes.

1544. What

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Mr. *Macdonald*—continued.

1544. What would they be liable to; two calendar months' imprisonment?—He would be liable to the punishment which the law provides.

Mr. *Knowles*.

1545. Does not the Act of Parliament provide that the workmen have power to examine the mine for themselves, or to depute any other person to do so?—I do not charge my memory with the provisions of the Mines Regulation Act.

Mr. *Knowles*—continued.

1546. Is not that the 30th Rule?—I have not that in my memory.

Mr. SIDNEY SMITH, called in; and Examined.

Mr. *S. Smith*.

Chairman.

1547. WHAT is your occupation?—I am here as the Financial Secretary of the Iron Trades Employers' Association.

1548. Have you any statement to make to us?—We called a meeting of the London Branch of that Association, which is composed of the chief engineering firms in London, for the purpose of considering the question before the Committee, and whether evidence should be given. The meeting discussed the question fully, and they deputed me to state to the Committee the view that they entertain upon this subject.

1549. Will you do so if you please?—Their first impression is that certainly the law of liability should not go further than it is stretched at present. They are of opinion that the word "servant" is scarcely one that applies to the subject. The Roman law, from which the liability of employers has been transferred to this country, was a law with reference to slaves. Both in Greece and in Rome, and even in Judea "servant" was a convertible name for "slave;" the slave was no more his own master than the horse or the ass of the employer; but a British workman is, in point of fact, not a servant at all; he is a person who contracts to supply skilled labour to another citizen, and is responsible for his own actions; he is not bound to accept the service, or to continue the service if he does not like it; he may give it up whenever he pleases; and, therefore, our opinion is that every person should be liable for his own acts, and that other persons should not be liable for them. Masters in this country have no power over their workmen any more than one citizen has over another; it is a free contract between them. There is one suggestion that has run through, as I understand it, the evidence that has been given here. Constantly the question has been raised here of a small master; he cannot afford, it is said, to employ a manager; he must be his own manager. If the small master does anything that is wrong, he is personally liable for it; but if a master can afford to employ a manager who directs the infliction of an injury, the master is not liable for it, and it is said, "Is not this an anomaly?" But it is no anomaly at all; because in the case supposed the injury is inflicted by the small master himself who should be liable for his own acts, but in the other case it is not the master personally who has caused the wrong but the manager who ought to be and is liable for his own acts; and therefore the principle is exactly the same in each case; it is that every contractor shall be liable for what he does himself, but he shall not be liable for what other people do.

1550. Will you allow me to ask you on that point what do you say now with regard to menial servants; would the same reasoning apply to them?—In such a country as this a menial servant is not a person who does exactly what his master bids him. I think there is nobody who employs them that does not know that they are more saucy every day, and more difficult to manage.

Chairman—continued.

1551. Then you think we ought to alter the law which makes a man liable for his menial servant now?—I think so. I do not think he should be liable, because the man is a contractor just as anybody else is.

1552. Will you proceed, if you please?—Then there is a doctrine that is raised that *qui facit per alium, facit per se*; and that, therefore, the master acts by his manager, and what his manager does he does. So long as the manager does what the master desires him to do, it is perfectly just that the master should be liable for it; but whenever a manager neglects, whenever he bungles, whenever he does wrong, he is doing it expressly against the desire and against the instruction of his master, and the master is generally the greatest sufferer in every case in which the manager does wrong. Therefore, in point of fact, the master never does the wrong by another; he has instructed the manager to do right, and the manager himself does wrong; and, being a British subject, and as responsible to the law as anybody else is, he should be the person who should bear the consequences of his own *delict*, and not the person who has not committed it.

1553. You are aware, I suppose, that if a principal gives an agent an authority, and private instructions to act under that authority, and the agent violates those instructions, provided he acts within the authority the master is liable; are you aware of that?—I am not aware of that.

1554. I suppose if that is the law you would think it was wrong?—Believing the law of principal and agent to be as I have qualified it, the law appears to me to be a sound recognition of the principle I have endeavoured to explain.

1555. You see you have already upset two branches of our law; will you please proceed?—Then this principle is raised; it has been said, "Well, perhaps it is not quite just that one person should be responsible for the acts of another; but although it is not just, yet for reasons of public policy it is necessary that it should be done." Now we do not understand a morality of that sort; we cannot see why injustice is required to be done for reasons of public policy; we think on the contrary, as Fox said, that "what is morally wrong cannot be politically right."

1556. In fact you would alter the law of principal and agent, and of master and servant, as I understand, so as to make it conform to those views?—I am not aware that the law of master and servant makes the master liable for everything the servant does out of the line of his

Chairman—continued.

his duties, or contrary to the orders of his master.

1557. But it makes him liable for his negligence?—Yes. In the case of a coachman, although he may have come to his master with the best recommendations, and although he has been a good coachman, and driven him safely all his life, if he runs against a cab—the master is liable for the consequences. We do not think that that is just and right; we think that the coachman ought to be responsible, and indeed he is responsible by the present law both to his employer and to the party injured; and we believe that the coachman would be the person prosecuted if he were as wealthy as his master, and that the only reason why the master is taken hold of is because he is the only one who has got money. Then I think that there is a law with reference to shipowners, that for reasons of public policy the liability of a shipowner is restricted; that all the consequences that follow from the misfeasance of a shipowner's employés do not rest upon the shipowner, but that he has only a limited liability. That is the law, and why that should not apply, at all events, to other occupations, my constituents do not seem to see.

1558. Do you think that a just law which limits the liability of the shipowner to the ship and cargo?—I think it ought to be limited a very great deal more than that; that if you are carrying a bishop with an income of 10,000 *l.* a year, at the same charge as you carry a bricklayer at 30 *s.* a week, and you are liable to pay for accidents to both in the proportion of their relative incomes for reasons of public policy, there is no principle or sense in that.

1559. Supposing that a man is very well able to pay, and has done another an injury, why should he not pay to the full extent of the injury he has done?—If, personally, he has done or directed the injury, I need not dispute that proposition; but if he be only a vicarious offender, the offence on his part does not amount to the whole consequence of the penalty that the law imposes upon him. As I understand it the principle upon which this liability is thrown upon the employers is to render them more careful. That is the principle upon which it is argued that the employer should be liable for other people's actions—to render him more careful in the transaction of his business.

1560. You do not think it is in order to compensate these people who have suffered by his negligence?—I do not understand that to be the original principle of the law, but that the policy of the public law really is to enforce carefulness on the part of those who deal with the public.

1561. Where do you find that view of the law?—I am not prepared with quotations about it; I simply understand so; there be no *culpa*, no constructive *delict*, either actual or technical—what is called a legal *delict*, there is no compensation. The extent of the injury is merely made the measure of the penalty. Although damages are awarded as a civil remedy, it is still *in modum pœnæ* that they are inflicted—and there ought to be a distinction betwixt the fine imposed on the man who is only contingently and constructively to blame vicariously, and the man who is the actual wrongdoer.

1562. Will you proceed?—Then we do not think that these excessive penalties are at all necessary in order to produce carefulness.

1563. What do you mean by "excessive penalties"?—For instance, if there is an accident which involves consequences to individuals of liability to an enormous pecuniary amount, we do not think that the person who, perhaps innocently, or at all events without any malice, or intention, is in fault in an accident of that kind should be liable for that amount. The penalties are often enormous. Take a railway accident, I do not mean to say of course that a railway company is not able to pay well.

1564. It is not quite "of course" that a railway company is always able to pay well, is it?—Perhaps not.

1565. Do you approve, or disapprove, then, of the law with regard to railways as it stands at present?—With regard to railways I merely contend that the consequences to the railway itself of an accident are so enormous, independent of any claims by the passengers, or anything of that sort, that it would always be a perfectly sufficient stimulus for railways to be careful.

1566. Then you think that the railways ought not to be forced to compensate persons who have been injured?—I do not say that they ought not; all that I say is, that there is no necessity, morally, for the sake of producing greater carefulness to punish them at all, because their own losses are so extreme that they are always enough to prevent that. And you have also this, that although masters are not liable for the consequences of the injuries of their servants, while railways are for their passengers, you do not find accidents less on the railways where the consequences are very great, than they are where the consequences do not exist at all.

1567. Do you think that railways are compelled to compensate passengers whom they injure for the purpose of punishing them; is that your view of the law?—Injury is an offence against public law, and compensation is the penalty.

1568. You do not think that the object is to compensate the people who have been injured, but only to make the railway more careful; that is your view?—A breach of public law is the ground of compensation; the loss to the injured is the measure of the penalty. *Injuriæ*, which means literally, "not law," "unlawfulness," must be proved against the offender, as the basis of claim to redress; and, although the effect of the law is to compensate the injured, the *rationale* of compensation is the punishment of the injurer.

1569. Where do you find that view of the law; where have you found it so laid down?—That is my impression of the origin of the principle of compensation for injury as transferred from the Roman law. In reference to railways, there is a theory of the courts that there is an implied contract between the railway and the passenger for the purpose of carrying him to the end of his journey, and the compensation given is damages for breach of contract. That is a figment of the law; every person going by railway knows that he has a certain risk to go through; he knows that he is flying at 50 or 60 miles an hour; he knows he has a steam engine to go with that may burst its boiler or fracture its driving-shaft; he knows that people are fallible

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Chairman—continued.

and may make mistakes; and he ought to, and I believe does, take the risk; I do not believe that any passenger going along the railway thinks that he has made a contract to be carried safely; he merely goes for the sake of being transported and is prepared to take the ordinary risks. Then there is a special consideration we contemplate, and that is, that if you once introduce this principle of liability you will have no end of actions at law.

1570. Do you think that the fact that a liability will create actions at law is a reason for not making people liable?—It will involve every employer in actions at law on all occasions when there is an accident, whether he be really liable or not.

1571. You think there ought to be no liability?—Decidedly; I think there ought to be no liability of one person for the laches of another; and I may state that that is certainly the opinion of those who sent me here, that every person ought to be liable only for his own acts.

1572. But your principle would go further, would it not, because if a person is liable for his own acts, that has a strong tendency to produce actions at law?—Yes, no doubt; and the less that temptation is presented the better.

1573. Nobody ought, therefore, to be liable for anything according to your view?—Every person must be liable for his own acts; but if he is to be liable for every accident that happens without his consent and against his instructions, simply because the men who has caused it are in his employ, he will never be done with the most critical actions and splitting hairs in every case. I have here a case decided in the Court of Session in Scotland before all the seven judges. If the Committee will be pleased to read it they will see what an infinite labyrinth of forensic casuistry every action under the proposed law would involve.

1574. What is the name of the case?—Woodhead against the Gartness Company.

1575. Is there any observation you wish to make on that case?—I have been bred a lawyer, and was in practice for a considerable time, and my father before me, and I confess when I go through that, I see what a labyrinth of litigation every one of these cases will lead to.

1576. The decision in that case would rather agree with the views you are expressing, would it not?—The law in Scotland appears to be very much what it is here.

1577. I mean have you any observations to make on that case?—I have no observation to make on that case, except this, that going through the whole reasoning of the judges, I see that you can hardly get a principle out of it.

1578. The principle was that the servant of the contractor was a fellow servant with the servants of the owner of the mine; that is the principle of the case?—That is the principle, but then it arose in the case that the master had employed a sub-contractor to do a certain part of the work by piece, and the question was whether the servant of that sub-contractor was so engaged in the common employment as to be a person for whom the original master was to be liable; that is just one of the infinite questions that will arise out of this principle, and on which in that very case there was diametrical contrariety of opinion.

1579. And they decided that he was not liable?—They decided that he was not liable because

Chairman—continued.

he was in common employment; but the very next case that comes, you may have a speculative action brought and a jury find a verdict quite the other way.

1580. Will you have the kindness to proceed?—The chief other observations that my constituents would make, are that they are quite of opinion that there ought to be no liability of one person for the laches of another; that is their first principle. Then they say that if you are to have that liability, it may operate as a great temptation to poor men to get themselves maimed if it is to operate as a life annuity from their employer, and you should have some sort of restriction of it, so that people might know the extent of the risks that they have to run; and that it is as much for the advantage of the employed as of the employer, that there should be some limit to the liability of masters, so that they may know whether it is possible for them to continue business with so many risks as would arise under the supposed circumstances of the alteration of the law. I may mention a thing that has been in my own experience; the peculiarity of this question is that in every case the defendant will be rich and the plaintiff poor, or worth nothing; and therefore if the poor are allowed to raise actions on all hands whenever they please, it will be infinitely better for the employer, whether he is in the right, or in the wrong, to pay a good sum and be quit of it; for the endless discussions at law that would arise, and jury trials and so on would be such as would render it impossible for persons safely or reasonably, to carry on their business under such a system.

1581. As I understand you, you would not allow poor people to raise actions when they please; how would you propose to limit that right?—It is not that they should not raise actions when they please, but that there should be some sort of limit to the liability of the master, if he is to be liable; and also that there should be some cheap tribunal by which the enormous costs at present exacted in the law should be to some extent avoided, or some provision that no action under the proposed law should be raised without the preliminary report of an inspector to some central board, and the authority of that board. It has occurred in my own experience that there are attorneys who say, "I do not care whether my client or the opposite client has the money;" in point of fact, some say "I would almost prefer that mine had not, for I will by that means drive the other party into a settlement, since they know that it would be better to do that than to incur an expense from which they never could get any result." I was also told by one of our members that there are solicitors who have persons watching at all the hospitals, and whenever there are accidents happening they volunteer their services for the purpose of raising actions.

1582. Then do I understand you that the remedy you would propose for this would be to make the law cheaper and more easy?—That there should be some tribunal for questions of this sort that would not overwhlem masters with the prospect of such an enormity of costs that it would be better for them to submit to injustice in every case rather than go to defend it.

1583. And would make it easier for the poor people to sue?—Of course it would.

1584. You

Chairman—continued.

1584. You do not object to that?—Certainly not. The expenses of the law have come to be such a curse in this country that cheap injustice is better than the dear justice we get from it.

1585. Have you any other observations to make to us?—No, that is all that occurs to me.

Mr. *Macdonald.*

1586. You seem to make a very serious accusation against the legal gentlemen; do you know of your own knowledge that legal gentlemen have persons going about watching and looking to get up cases?—No, I do not.

1587. May not the person who has told you this story, have told you what is not true?—I do not think it is likely; he is a very respectable gentleman.

1588. Would you object to giving his name?—I would not object, but he might.

1589. Then you come here and make a statement, and cannot give the name of the person who makes this charge against the legal profession?—I can give it, but for the reason stated prefer to withhold it. I give the statement as I had it; that is all I have to say.

1590. And you ask us to believe it?—I leave you to believe it or not, as you choose.

1591. Do you not think it is a serious charge to make against the profession?—It is by no means a new one, and it is not against the profession, but only against some lower members of it.

1592. And that you ought to have some grounds for making that charge?—I think I have a ground.

1593. You seem to deny the doctrine of responsibility altogether of an employer for his servant?—I am of opinion that in a country such as this, where no person is a servant in the proper sense of the term, but where he is only a contractor of his labour, and can stop it, or can decline to go on with it whenever he pleases, and is a British subject just as much as anybody else is, he and not another person should be responsible for his actions.

1594. Supposing that an agent of any large coal company sold you 10,000 tons of coal to deliver on a given day, do you think that you ought, the agent having sold you these coals, to compel the owner to supply the coals as the agent sold them to you to deliver them?—I do not quite understand.

1595. You seem to deny the responsibility of employers altogether; supposing the agent of a large colliery sells you 10,000 tons of coal to deliver them on a certain day, would you hold the owner of the colliery to be responsible for the agent, and to deliver these coals?—Certainly, if it was within the powers of the delegation from himself to his agent.

1596. So that you would hold, in some cases, the delegates of owners responsible?—I would hold in all cases that the delegates of owners in the execution of the directions that they received from their employers, if they were not deviating from those directions, should be responsible. Nay; if the principal by his acts has constructively allowed his agent to hold himself out to third parties as clothed with larger powers than he expressed or intended to confer, the principal should be compelled to adopt his acts. But what I say is, that wherever a claim is made of responsibility of that kind, in point of fact the manager, or whoever he is, has been doing what he has been told not to do, and that it is by his own neglect, and by his own laches, and not that of his employer, that the accident has happened; and that the manager ought to be liable for his own acts; he has contracted to discharge a duty, and he ought to fulfil it; he is as much responsible to the master as he is to the men, and as he contracts with the master to execute his duty, he should be made to do it. And the only reason why the master is taken, is simply that he has got money in his pocket.

Mr. *Macdonald*—continued.

1597. Does the owner make all this statement that you have made regarding his manager's responsibility a condition of the contract?—No, I do not know that he does; I do not think that there is any condition. Certainly the owner neither expresses nor implies a covenant rendering himself liable for another man's breach of a contract.

Mr. *Hopwood.*

1598. Are you in the practice of the law now yourself?—Not at present.

1599. Did you ever practise it?—Yes.

1600. As a solicitor, or as an advocate?—We have in Scotland a mixed calling of men who are both solicitor and advocate, what are called procurators; I am one.

Mr. *Bulwer.*

1601. I understand you to say that every man to whom an authority is delegated, ought to act strictly within the authority that is given?—Yes.

1602. And that if he does, that the person who has given him the authority, ought to be liable for his acts?—I do say that.

1603. But if the person who is authorised exceeds his authority, and acts contrary to it, in that case the person who has given the authority ought not to be liable?—That he ought not to be liable.

1604. For instance, a case was just put to you with reference to an employer being liable for the acts of his agent; now a master of a ship gives the captain authority in a foreign port to sign bills of lading; are you aware that it has been decided that that authority is merely to sign bills of lading for goods put on board, but not to sign bills of lading that are not put on board?—The authority of a shipowner to the captain extends only to certify that the goods when loaded are on board.

1605. But you would hold that to be good law, that although there is a general authority to sign bills of lading for goods put on board, still the master ought not to be bound by a bill of lading which is signed for goods that are not put on board?—I fancy the reason why that liability does not arise is, that it is always understood that there shall be no signature of receipt for goods until they are actually deposited and the captain in certifying the receipt, and the consignor who takes it, both conscientiously attest what they know not to be the fact.

1606. I was putting that as the law of principal and agent, as an illustration of the branch of the law of the principal being liable, or not liable, for the acts of his agent?—With reference to that, is this to be extended, for instance, to shipping; that every mate who turns the rudder the wrong way visits upon the shipowner

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Mr. *Bulwer*—continued.

the whole consequences of a want of skill? Whenever a captain happens to get drunk, although he has been a certificated captain, is the shipowner to be liable for the loss of his ship and all the passengers under such circumstances? There would be no shipowning at all if that were the case.

1607. I only wanted to understand your view accurately. You think that the law that makes (to revert to the familiar instance) a gentleman whose servant drives over a person in the road liable, the gentleman not being in the carriage, or giving any directions whatever, is not in accordance with justice?—Certainly not.

1608. And you do not wish to extend that?—Certainly not; it has gone a great deal too far already. I say that a coachman is a skilled person, and undertakes to do a certain duty, and if he does not do it he should be punished. His master's carriage and horses are smashed all to bits, and that is quite sufficient penalty for him; and there is no fault of his in the act.

Mr. *Knowles*.

1609. Did I rightly understand you, that if the law is so altered as to make the master responsible for the acts of his workmen and his managers, you would have it to a limited extent?—That is what I should suggest. I mean that that would serve all possible purpose of enforcing greater care if it were considered necessary.

Mr. *Knowles*—continued.

1610. Have you considered to what extent you would limit it?—No, I have not.

1611. Supposing the law was extended to increase the responsibility of masters and servants, limited to any extent, what is there to prevent that barrier of limit being broken down in any succeeding Parliament?—It is sure to be broken down; the moment that you innovate upon the principle of the distinction betwixt injury to a stranger and to those who engaged in a common employment, are presumed to have accepted it with all its incidental risks, it is sure to be broken down, until there would be no limit to it whatever, and I cannot understand, as a lawyer, how the thing is to work; for who is to determine what or who is a manager and who a sub-manager, who a foreman of this department of work, or who a foreman of that part, and whether he is foreman in the same department as that of the person injured, or as that of the injurer? Then you have got the question of piece-work; a lot of men contract to produce a certain amount of goods by the piece, or to work by the job, and therefore they are actual contractors, and not servants at all. You have an infinity of questions at law if once you withdraw the protection to the master in these cases. Then mixed questions of law and of fact would be left to juries who would decide in all diversities of ways, and be always tempted to lean unjustly to the poor man. So that masters would never know what the result would be; while A never hesitates to be liberal to B at the expense of C.

Mr. John Brinton, called in; and Examined.

Mr. *J. Brinton*.

Chairman.

1612. You are a carpet manufacturer at Kidderminster, I think?—Yes.

1613. You have evidence to give us on this subject; you have some statement to make, I believe?—I have, if I may read it. I am a millowner at Kidderminster, in the county of Worcester, and head partner in the firm of John Brinton and Company, who have large carpet manufacturing establishments by power, both at Kidderminster and Leeds. During the last five years we have had about 26 accidents spread over 1,200 hands, and these chiefly in the carpet and spinning departments. The causes of these accidents I have scheduled here in my hand, drawn up by one of my partners, and I find nearly all are attributed to carelessness on the part of the workpeople themselves. All have had proper surgical treatment at the firm's cost, and in most cases the sufferers have been maintained (until they could go to work again) wholly or partly by the firm, without the intervention of any pressure from the inspector, or the hands themselves; and I may add that we encourage a sick and accident club to facilitate help additional to what the firm voluntarily affords. Under existing Factory Acts when the inspectors have ordered a part of the machinery to be guarded, and the millowner neglects to guard it, and an accident occurs, the factory owner may be fined in a penalty of 100 *l.*, and any part of this may be given to the sufferer. Also, if it is thought necessary, the Home Secretary, on recommendation of the Factory Inspector, may order an action to be brought on behalf of the injured party. Under the newly

Chairman—continued.

proposed Bill of the Home Secretary, Mr. Cross, it will, if it becomes law, largely increase the number of places under the factory supervision (such as saw mills, tan yards, steam brick yards, steam flour yards, &c.), which now rank as workshops only. In addition to the large powers at present possessed by inspectors to enforce fencing in those places, many of which are attended with danger to those employed, I think it might be well also to confer upon inspectors the right to bring actions for penalties on behalf of sufferers, when the circumstances seem to justify it. This, I believe, would afford quite sufficient protection and right of compensation at law to the workpeople, and, in my judgment, it would be far better that the inspector should originate such actions than that any law should pass encouraging hungry lawyers to start claims on employers.

1614. You would prohibit any actions being brought except with the consent of the inspector?—Yes, without his certificate. Since I wrote those lines I may add that I have referred to the Act of 1844, and having compared it with the newly proposed Act of Mr. Cross, I find that Section 24 in the Factories Regulation Act, 1844, is mainly omitted from Mr. Cross's proposed Bill. Under that Section 24 it says: "Prosecution for compensation by an inspector." "And be it enacted, that one of Her Majesty's Principal Secretaries of State, on the report and recommendation of an inspector, may empower such inspector to direct one or more actions to be brought in the name and on behalf of any person who shall be reported by such inspector to have received

Chairman—continued.

received any bodily injury from the machinery of any factory, for the recovery of the damages for and on behalf of such person."

1615. You say that is omitted in the draft of the present Act?—I will read what is to be found in the draft of the present Bill, Section 75, in the newly proposed Bill: "If any person suffers any bodily injury in consequence of the occupier of a factory having neglected to fence any machinery required by or in pursuance of this Act to be securely fenced, the occupier of the factory shall be liable to a fine not exceeding 100*l.*, the whole or any part of which may be applied for the benefit of the injured person or otherwise, as the Secretary of State determines." Before drawing up these papers I took the opinion of a local factory inspector; I consulted him on these two points; whether any deficiencies exist, in his opinion, in the law at present which legislation can supplement and improve upon; and whether, in his judgment, the losses from accidents to the individual workmen were, or were not, so far as his experience goes, fairly met by the liberality of employers, even though they might be caused by the negligence of the workpeople themselves. His observation is as follows: "In a case at Kidderminster, the lid had been taken off a hot water tank on the ground at back of the yard. None of the factory hands had any business in this part of the yard. A lad entered the yard by a wrong entrance, and in the early morning, 6 a.m., in a fog, walked into the tank and was scalded. Had he entered where he ought to have gone at the factory entrance, he would not have gone near the tank. On being appealed to in this case to recommend an action against the firm, I did not consider the firm liable to compensate, although the tank ought to have been kept covered, as the sufferer ought not to have 'trespassed' in that part of the yard; but the firm eventually gave a liberal donation to the parents. With regard to the matter generally, I have found that the firms, in most cases where a person has been injured, have acted generously to the sufferer. Your own firm bears a very good name (and I can give you evidence, if need be,) for generosity towards injured persons. In factories, that is, all places where we have any power at all to enforce fencing, I scarcely ever find any objection from the masters, or hesitation to put all guards, and to take all precautions that I, acting officially, have recommended; but I very often find the guards taken off. In looms, especially, I continually find that the weaver himself has neglected to replace the guards. In such cases it would be monstrous to punish the owner of the factory in case of an accident by making him pay damages when the person injured had failed to see that the guards, &c., were in their proper position. In a large number of accidents there is contributary negligence on the part of the sufferer; but if every case were brought to trial, the employer must be mulcted in his own expenses." I wish to give an illustration of that. About three years ago one of the employés of my firm met with an accident in a factory. The boy was throwing something, putting his hand behind him to take up an implement to throw at one of the girls in a distant part of the room; he had no business to be where he was; but putting his hand behind him thoughtlessly, he put his finger directly into the cogs of a machine, near which he had no business to be; and he was taken to the hospital, and his father came down, and very much regretted his son's conduct, and the trouble he had given on other occasions besides this one of his carelessness. A few days afterwards the father called again, and asked what he was to have. The manager looked at him very oddly, and said, "What do you mean?" "Oh! I mean compensation; I am told that I ought to have compensation for this." "But your son ought not to have been doing what he was, and ought not to have injured himself." The reply was, "If you do not give me some smart compensation, you shall hear from me." We soon afterwards received application for 500*l.* damages from the father of the boy, who was a tailor; this was from a firm of lawyers who had got hold of this case; and I know, as a fact, that at one of the great hospitals in London, every case that goes into the hospital is touted for, with a view of feeding those who live upon such spoil. We received this application for 500*l.* damages as a kind of joke, and took no notice of it; but an action was brought, and (to cut short my story of the employer), we won the case as defendants, but we were mulcted in a loss of 198*l.* 14*s.* 6*d.* by defending that case.

Mr. *Bulwer.*

1616. Was that at the assizes?—At one of the courts in London. We applied for our costs, and got this characteristic reply from the solicitor to the plaintiff: "Gentlemen, In reply to your application, I beg to say, my client has not one farthing. Yours respectfully."

Chairman.

1617. What inference do you draw from that: that people should not be allowed to bring actions without the consent of the inspector?—Without his consent, and his certificate that there is a fair and righteous ground. I may say that in that case the inspector gave evidence for us (the defendants) on that particular occasion. "I consider that the master, or employer," says the inspector, whose opinion I am quoting, "ought to be held responsible for any accident, if he employs machinery of such a kind that an accident is probable. Twice, at some pipe-works near Brierley Hill, a boy has had both hands cut off by a stupid workman letting fall the plunger from above, while the lad was feeding the hollow mould with clay. A boy cannot really protect himself against the clumsiness of the man for whom he works, but such a dangerous arrangement ought never to exist; and if these works were under 'Factory' law, we could insist on proper precautions, in fact, a different arrangement of the machinery. Here Mr. Cross's New Factory Act, if we do our duty, ought to be sufficient protection to the workpeople. Here is a case where compensation ought to have been given. You will see in the last Inspector's Report a case at a brickyard, near Malvern, in which, if it had been a 'Factory,' I should have endeavoured to get compensation on behalf of the sufferer. This is an instance of non-liberality on the part of employers. To answer your two questions briefly, I think that if Mr. Cross's new Bill becomes law, and a large class of works (tan-yards, brick-yards, flax-scutching mills, sawmills, and some others) where machinery is used are included under the Factory Laws, there is sufficient remedy

Mr. *J. Brinton.*

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Chairman—continued.

in the enactments which give power to inspectors to bring actions on behalf of sufferers to protect the workpeople in all factories. There are, however, still many accidents in thrashing machines, turnip and chaff-cutters, which ought to be guarded, and which may easily be guarded much more than they are, and I think that a law is required to meet such cases. At Ledbury Rural Hospital there have been a lot of cases of fingers and hands, and even a bit of a foot cut off. In by far the larger number of cases I find the masters inclined to be liberal; and I believe that if they were not afraid of giving an opening to law proceedings, by appearing to 'admit their liability,' there would be very few cases in which the sufferer would not be amply compensated for any injury in which his own fault had not contributed to the accident. I make a point of inquiring into every accident in which there is any doubt, and in by far the largest number, now that fencing of all dangerous places is usual, I find that the sufferer has been the chief person to blame for the accident; but in a few cases, in all perhaps five or six in the 12 years that I have had to do with factories, I have found the employer inclined to repudiate all liability; and in these cases I should, if I could have done so (if Chief Inspector), by myself have exercised the power which the law gives me, of bringing an action on behalf of the sufferer for damages." It will be observed that under the Act of 1844 it seems as though the inspector had that power; but under the proposed Act it does not seem as if he had. "It may be true that the factory inspectors have never brought an action, but it would be far better, I think, that they should have this power, and that they should exercise it, than that an opening should be left for extortion, by perpetual threatening of petty actions by workmen, who would probably have a special fund for such actions. In the Kidderminster case, mentioned above, I should, if called upon as a witness, have expressed my opinion that the firm ought not to be held liable for damage; and I told the sufferer's parents my opinion, although they were strongly disposed to try an action. In a case at Coventry on November 14, 1867, in a lace-factory where a guard to a crank was removed unknown to the woman, and her hand was smashed, because she thought the guard was there, I would have brought an action on behalf of the sufferer; so also in the brickyard last November, I think the sufferer's family should have had compensation; but, on the whole, I think in all factories, as included under Mr. Cross's New Bill there is sufficient protection of the workman if the penalties for non-fencing and liability of the factory owner to an action at hand, on behalf of the sufferer, at the recommendation of the Home Secretary, acting on report of the factory inspectors, are enforced. This is not an 'official' document, but you may refer to me as your authority for any opinion expressed in this letter. I have not Mr. Macdonald's Bill before me, but I remember last year reading it carefully; and now that Mr. Cross's New Factory Bill will include such a large number of new works as factories, I feel more than I did last year that in factories, especially as places where unions, clubs, &c., have facilities available for putting pressure on the employers, it is desirable to add rather to the power of the inspectors, as men wholly disinterested, than to give to the workpeople too great

Chairman—continued.

a facility of bringing actions at law, which must always entail heavy cost, that is, a large fine on the employer, in the shape of expenses and loss of time, &c., which he cannot recover from a 'pauper.'"

Mr. *Wyndham.*

1618. You say you know it for a fact, that people wait near the hospitals in order to get up cases of this kind?—I have been assured of that by my managers.

1619. Legal attorneys?—No, touters.

Mr. *Bulwer.*

1620. Have you found also in your experience this: supposing a lad in your employment, or any other person's employment, is injured, and there is no legal liability on the part of the master, but he, out of generosity, is willing to render his assistance; have you, in your experience, ever been present at courts of justice where that has been brought forward against the master as an admission of his liability?—I have not.

Mr. *Meldon.*

1621. Do I rightly understand you to say that, in your opinion, employers ought to be protected more than any other members of the community against those whom you are pleased to call "hungry lawyers"?—I do not consider that employers ought to be protected specially from hungry lawyers more than anybody else, but to be fairly treated.

1622. I thought you said that actions should not be brought against them unless upon the certificate of an inspector, or some arrangement of that kind?—Yes, I did.

1623. You could not suggest any such arrangement as to other persons that are not employers; and therefore you would suggest that employers should be put on a better footing with respect to having actions brought against them than ordinary members of the community?—No, I do not see that; I think that when the inspector circulates through the various sheds, and requires everything to be done, and the employer carries out his requirements, no action should be brought against the employer until the inspector's certificate has been put in to show that what is fair has been done between employer and employed; he stands between the two classes of the people.

1624. Why should the employer have the benefit of the intervention of a third party, to protect him from actions, when that same benefit would not be extended to other persons?—The factory inspector is an independent person paid by the State, and does his duty between both parties.

1625. There is nothing to prevent an action being brought by any other persons, whether they have a good cause of action or not?—No, there is not. I take it that the inspector has to enforce penalties.

1626. I take it that in the observations you made you refer to the actions which are brought for the infringement of statutory enactments, and not the general bringing of actions?—I mean that if the inspector desired such an action to be brought, I do not think the employer would be shielded even then from any action which the parent of the sufferer chose to take.

1627. Do you happen to know whether, in England, there is any statutory enactment to protect a person from having what we call sham actions,

Mr. *Meldon*—continued.

actions, or actions without good foundation, brought against him unless security for the costs is given?—I am not aware of anything of the kind. My firm applied to the judge, through the solicitor conducting the case, that security should be given for the costs in this sham action which I have given you the account of, but the judge repudiated that idea.

1628. In Ireland we have a statutory enactment, that where any action is brought by a person without visible means in a superior court, the superior court shall have power to remit that action to an inferior court, where it can be conducted at a very small expense. If that enactment does not exist in England, would not that meet the difficulty which you suggest, rather than providing that an action should not be brought without the certificate of the inspector?—I am not prepared to answer on that point; it is a new feature which I have not fairly considered.

Mr. *Mucdonald.*

1629. You said that the inspector had the power, I think, under the law to direct a prosecution?—Yes, under the Act of 1844.

1630. Who is the inspector that you have been reading from to-day?—I will give his name if required.

Chairman.

1631. What is it that you read from?—I read his reply to my question as to what additional protection he thought was required more than the law now affords.

1632. Is this a private communication between you and him, or in his official capacity?—It is in his official capacity.

1633. The Committee are of opinion that you must give us the name of the inspector?—Mr. Edward B. Fitton, Sub-Inspector of Factories, Malvern.

Mr. *J. Brinton.*

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Mr. John Robinson, called in; and Examined.

Chairman.

1634. What is your occupation?—My occupation is that of an engineer. I am one of the managing directors of Sharp, Stewart, & Company (Limited), of Manchester, who are locomotive engineers, and I have been an employer of labour as an engineer for 34 yars.

1635. What is the business of these gentlemen at Manchester?—They are manufacturers of locomotive engines and other mechanical appliances; but their chief business is the manufacture of locomotive engines for railway companies.

1636. You are here to speak upon the manufacture of locomotive engines?—Of locomotive engines and other similar manufactures, workshop tools, and cognate appliances.

1637. What have you got to say on the subject of our inquiry?—Would you allow me to read a short statement of my opinion?

1638. Will you please do so?—I have carefully considered the subject referred to this Committee, and I venture to think that some modification of the present law relating to the liability of employers for injury caused to their workmen, might be made with advantage to all parties concerned. I should be disposed to suggest for the consideration of the Committee that no employer be liable for injury to his servants, unless caused by his own personal culpable default; but that in cases where the management of a factory, workshop, work, or establishment, is delegated by an employer or by a company to a manager, the employer or company be liable for compensation for injuries occasioned by the culpable acts or careless instructions of such manager, the manager being also liable individually for the result of such acts. All managers whose acts are to impose liability upon the employer to be registered, and notice of such registration to be posted at the entrance of the works, along with that of the factory inspector. I suggest that, in order to answer the question as to how the limitation of the liability of the employer could be altered from the present law; and this seems to me as if it would have the advantage of defining

Chairman—continued.

exactly the extent of liability which the employer would have for the acts of his servants. I think it would be unwise to extend the liability of employers in the engineering trades beyond the point I have indicated, as I do not believe that a further extension would diminish the number of accidents, or would tend to make men more careful of themselves or of others; while it certainly would have the effect of increasing the cost of production in this country, and thus render it more difficult to obtain orders from foreign countries, where the absence of restrictions as to working hours, a lower rate of taxation, and lower rates of wages, enable engineers to compete very successfully with the mechanical productions of this country. There are certain dangers to workmen in the engineering trades which, in my opinion, cannot be guarded against by rules and regulations, and can only be avoided by the workmen themselves, whose technical and special education fits them, often better than masters and managers themselves, for the safe execution of the works which they take in hand. I mean as to putting on and taking off driving belts, starting of engines after meal hours, and repairs; the use of lifting tackle, chains and ropes; the use of cranes, with chains and breaks; the use of steam hammers in smitheries, the detection of flaws in materials, and such like. For the exercise of such discretion the men are paid in proportion; and the removal of the responsibility to other shoulders would, in my opinion, not only not diminish the number of accidents, but would raise up an amount of litigation and ill-feeling between the employers and employed which does not now exist, and which is to a large extent obviated by the benefit societies which are in operation in many, perhaps most, large establishments, for provision against death, accident, sickness, and the like, to which the employer is usually a considerable subscriber, and beyond which he is generally ready to go in serious cases where he thinks the accident has arisen without contributory negligence on the part of the person injured,

Mr. *J. Robinson.*

Mr. *J. Robinson.*

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Chairman—continued.

1639. Do I rightly understand that you limit your proposal to cases of companies, or would it apply to any single employer?—Where a single employer is not in attendance to give directions himself usually, but delegates power of control to a manager, then I think it might be fairly asked that he should make himself responsible for the careless and negligent acts of that manager. But to avoid the further extension of that liability, I should suggest that notice of the registration of such manager should be posted up at the entrance of the works, so that everybody who takes service in that place should know for whose acts the owner is liable. That would define exactly the liability of the employer. At present there is no liability if the men are in common employment, but I propose to exclude from the consideration of common employment a registered manager.

1640. You would propose, in fact, that a registered manager shall not for that purpose be considered in common employment?—Just so.

1641. Would the action be brought against the manager or the company?—The action might be brought as at present, either against the manager or against the company.

1642. The action would then be against the manager for the manager's own default?—For the manager's own default; but if the manager were proved to have been guilty of reckless carelessness, in the general or permanent absence of a master from the direction of the business, I would say that then the same liability that lies upon employer as regards his own acts should be imposed upon him as regards the act of that registered manager.

Mr. *Tennant.*

1643. Do you mean that you would join the master and manager in the same action; would the workman have to sue both?—He might sue either, as at present.

1644. He cannot sue the master at present?—He can sue the master at present for his own negligent acts, but not for those of the manager.

1645. Would you make it compulsory in the case of negligence by the manager, that he should join the master in the same action?—No; my view would be that he should bring his action against either the master or the manager.

1646. Would not the practical effect of that be that the manager would have indemnification from the employer?—No doubt that might be so. If the manager were mulcted in damages for compensation, the employer would probably say, "You have done what is reasonable, and I shall see you indemnified," Probably it would have the result of an undertaking in the contract for employment.

1647. No manager would undertake the duty unless he had that indemnity, would he?—No, probably he would not.

1648. In some very large works indeed, could it be done by making one manager responsible?—I speak, of course, of engineering works, such as our own (I think it is better that we should each keep to our own line), and in almost all engineering works I know, the real conduct of the establishment is brought into one man's hands.

1649. And the registration of the manager which you propose, is simply in order that the workman may know when he may look to anybody for compensation in the case of accidents?—Yes, and for whose acts the master would be liable.

Mr. *Tennant*—continued.

Mr. *Macdonald.*

1650. Whom would you call the manager, the person who conducts the whole works?—If you wish, I will give you the instance of our own case, because this question arose between the Home Secretary and myself some time ago, when the Bill was brought before the House last year. In our case we are a limited company; therefore, I suppose I, as a managing director at present, am in common employment with all the workmen on the establishment; and therefore in the event of any act of mine producing damage to another workman, the action would be barred by the consideration of common employment. Then, I say, that it seems reasonable to me that somebody should be in the position of a master in such a case; and I propose that the man whom we call the general manager of the works, should be put in the position of the master as responsible to the servants for damage done by his neglect.

1651. Then you would regard only as manager the person who is directing and superintending the works day by day, and has them under his immediate control?—Yes.

1652. You know there was a very important case, the case of Wilson *v.* The Merry and Cunningham Coal Company?—I do not know it sufficiently well to answer questions upon it.

1653. But you would hold as the manager, and you would hold responsible the person who is superintending the works, and who really is doing that which the employer himself would do if he was carrying on the works?—I think the phrase "vice master" has been used in the course of the examination; that, I think, expresses pretty accurately what I intend.

Mr. *Eustace Smith.*

1654. I think I understood you to say that you think that the owners or company, or principals in the concern should be liable for the acts of this registered manager?—I suggested that for consideration.

1655. You are aware that at the present time principals are not liable for the acts of their managers?—I am aware of that.

1656. How would you propose to induce any one to have such a very dangerous official upon his premises as a registered manager; I know what you want to do; but I want to know with what machinery you would obtain the appointment of this registered manager; because, as the law stands at present, there would be no inducement to anybody to have a registered manager?—I should suggest for the consideration of the Committee, whether it would not be desirable to not only put up the name of the registered manager, if there were one, at the entrance, but that possibly, in order to give a clear idea of the person for whose acts the owner is to be responsible, you should put up the name even of a managing partner who acts as manager. I say this in order to try to get over the difficulty which has always been raised of defining common employment.

1657. Then in fact you would make it obligatory to define a manager of a factory, be he owner or not, just as it has been proposed to make it obligatory to have a managing owner of a ship

Mr. *Eustace Smith*—continued.

a ship for instance?—Yes, or just as you put on a railway company's cart the name of some officer who is responsible in case an accident arises from it.

1658. You propose to make it obligatory?—Yes.

1659. Because, unless you did, the inducement would be not to do it?—Yes.

Mr. *Meldon.*

1660. I think your statement is a very able one, and I should like to ask one or two questions to elucidate the matter a little further. The principle you propose, I think, is, that where a private firm, or a private person, or a company, choose to put a manager in their place, and delegate all their powers, and make him the *alter ego*, in such a case as that the manager, as well as the owner, should be liable; that is the principle?—Do I understand your question in this way, that the employer should be responsible in pocket, at all events, for the act of his manager?

1661. Yes, that is the principle you advocate and recommend to the Committee, is it not?—I suggest; I would not venture to recommend.

1662. Does it not occur to you that the fact of suggesting that there should be a registered manager would rather interfere with this principle, and would make it unworkable; because no man would register a manager if he could avoid liability by not registering?—But if you make the registration obligatory then it imposes this necessity; either the man must manage his works himself, or he must pay such an amount of money as would induce a manager to undertake the responsibility.

1663. Do you not think that would be met in this way, by leaving it as a question of fact, whether any person who was in the position of manager was the *alter ego* of the employer or not?—I think you would in that case have just the same difficulty that you are under now, of defining common employment.

1664. Common employment is now substantially defined by law?—A great many difficult questions arise out of actions coming under it. It is one part of the inquiry of the Committee to suggest a more effective definition of "Common employment."

1665. The definition of a fellow servant is very much against the employed and in favour of the employer at the present time; but do you not think the case could be met in this way, by leaving it to be ascertained, as a matter of fact, whether the person, who was guilty of negligence, was in the position of *alter ego* of the employer or not?—If you mean a matter of fact to be ascertained on the opinion of a jury being asked in such a case, I would say that the Legislature should define the course to be taken, and leave as few questions of that kind to a jury as possible.

1666. Is it not a question of fact, whether the manager is a servant or the *alter ego* of an employer?—It would be no longer a question of fact if there were a registration. At present, I think it is exceedingly difficult to decide who is manager or vice-master in the carrying on of large works.

1667. What arguments suggest themselves to you for not leaving the question of fact as to the position of the person who is guilty of negligence

Mr. *Meldon*—continued.

to a jury, or to be ascertained as any other matter of fact is ascertained?—Because I think not only is a jury, but a judge, is put into a very difficult position in matters of this technical nature, as to what really a manager is or might be. You heard the difficulties as between Mr. Heath and Mr. Macdonald, who took different views as to what the name of a manager covered; whether he was an underground manager, or a viewer, or a fire-tryer; and these questions are so difficult for a judge and a non-technical jury, that I think there is a great objection to leaving such matters to them.

1668. Then I understand that you would make it obligatory upon every employer either to do the work himself or to have a registered manager?—Yes.

1669. Does it not occur to you that that would be productive of great inconvenience?—It does not strike me that it would. Of course I am speaking now not of mines or collieries, but of engineering works, and not of railway works; I think there may be difficulties there.

1670. You are aware that in a private firm, if there is such a thing as a managing partner, he would not be under any circumstances a fellow-servant; you would not propose to alter that?—No.

1671. If there was a private firm, and one of them was acting as managing director, would you require that he should be the registered manager?—I think it would be convenient; but of course the other non-managing partners would be equally liable, as they are now.

1672. You said, of course, that you would make the employer always responsible where there was any culpable default on his part?—Yes.

1673. I assume that a culpable default would be the employment of incompetent workmen?—No. I think that is a question which would have to be settled by a jury, a very difficult question; but I think that usually an employer is as careful as possible to employ competent workmen for his own protection and for the advantage of his business.

1674. At the present time if an employer has engaged in his employment an inexperienced or incompetent workman, he is liable to any servant in his employment for accidents resulting from that course?—Yes; that is to say, he is liable because of his own personal negligence in having employed a manifestly incompetent workman.

1675. I would not say "manifestly" incompetent?—I will put it in this way, in the opinion of the jury an incompetent workman.

1676. Would you include, in your definition of culpable default, the non-employment of a competent workman, or negligence in the employment of an incompetent workman?—I should not like to suggest any alteration of the present law in that respect.

1677. Have you known any cases in which employers have been sued by those in their employment for the act of an incompetent fellow-workman?—None.

1678. Are you aware that one of the greatest difficulties in actions of that kind at the present time is the almost impossibility of proving negligence in the employment of the fellow workman as a substantive case; that is that where there

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Mr. *Meldon*—continued.

has been negligence on the part of a fellow workman, and the person injured brings an action against the employer, not for negligence on the part of the workman, but for negligence in the employment of an incompetent person, such actions almost invariably fail owing to the difficulty of proof of negligence in the employment of the person guilty of negligence?—That is to say, that the ground of action is that the master has employed an incompetent servant. I think that it is exceedingly difficult to prove the employment of incompetent men.

1679. And that difficulty has rendered those actions almost invariably unsuccessful, has it not?—Nugatory, I dare say, very often.

1680. Would you see any objection in such a case to making the employer prove that he had discharged his duty in the employment of that servant?—That is a point I have not had before my own mind, and I think that is a question which the lawyers had better take in hand than we.

Mr. *Ripley.*

1681. Am I right in supposing from the suggestions which you have made, that you feel that there is some unfairness at present in the law which makes an employer who manages his own works responsible, and that the moment he hands over the management to a manager he ceases to have the responsibility which that employer has who actually manages his own works?—I must say that I think that seems indefensible and unreasonable.

1682. That on the part of the workpeople themselves, in point of fact, they are under a great disadvantage as regards these large concerns where the employer does not manage his own works?—I think it is a theoretical disadvantage as regards the workpeople, because I do not think in our businesses it would make any difference at all in the number of actions that would be brought; but it does seem unreasonable to me that a man may get rid of his responsibility by simply appointing some man to act in his stead.

1683. In the event of the law being altered to a form by which the owner might become responsible for the act of his manager, what necessity would there be for registration or for putting up notices at the entrance of the works that there was a manager, or that the owner was not directly managing himself; if the law made it clear that the owner was responsible, the simplest way would be to leave it where it is, and that the owner then, whether he manages or does not manage his own concern, should be directly responsible?—I cannot see how the law could make it clear in any way so palpalby as by the course I have suggested; I am admitting now a step in the extension of the liability of common employment, and I want to take every precaution to prevent that step being extended to others, and therefore, I suggest that there should be no possibility of mistake, and that the man for whose default I am to be responsible, should be clearly and well understood by myself and by my workpeople.

1684. Then am I to understand that you not only wish to place the name up, but that you would limit the extent of the liability in that particular concern; I mean as to the particular class of actions with regard to the carelessness of

Mr. *Ripley*—continued.

the manager, whether he should be generally liable, as the employer is at present, for any action that might be brought by any workman?—I see no reason at present why the responsibility of the employer for the acts of the vice-master, I will call him, should not be precisely the responsibility which the employer now incurs for his own acts.

1685. I fail myself to see why it should be necessary in any way to put his name up, or any notice whatever, if he was actually responsible for acts done by a man in the position which the owner would occupy if he managed himself?—Only to this extent, that a question might arise as to whether a certain person in my service was a manager or not. It would bar the doubt by putting his name up.

1686. You are not at present under the Factory Act, are you?—To a certain extent I am, as to the employment of young persons.

1687. In the event of Mr. Cross's Bill becoming law, that Bill would affect you to a much greater extent I suppose?—Very inconsiderably.

1688. You would have an inspector then?—We have an inspector now to see to the ages of the young persons.

1689. But not to see to the protection of the machinery, except as regards these young people?—No, we are not under the Factories Acts at present for that purpose; we have no fencing of the machinery.

1690. In the event of this Bill becoming law, you would come under the Factory and Workshops Bill to a much greater extent?—The only point I have given attention to is the question of any additional liability or disability of working over hours under the new Bill.

1691. In the event of such a Bill becoming law, would it be, in your opinion, any advantage to the employer that the factory inspector should have the powers of expressing an opinion as to whether actions should be commenced or not?—If you mean as a sort of judge of first instance, I think it would be an advantage, and tend to do away with one of the objections I have stated in my observations as to the promotion of litigation by pettifogging lawyers, I was going to say, who do not care where the money is, whether in the hands of the plaintiff or defendant.

1692. In that point of view an inspector would be a great advantage for the purpose of limiting these actions which might be commenced unfairly?—That is to say, as I understand you, he should be the judge of first instance, as to whether an action might be brought. I think it might be a convenient arrangement; but that does not occur in Mr. Cross's Bill.

Mr. *Shaw Lefevre.*

1693. I understand your proposal to be to except the principal manager from the law of common employment?—Yes.

1694. On the ground that where the owner of the business or the company do not or cannot manage the business themselves, then it is only right that they should be answerable for the person who does manage it?—Yes.

1695. The manager is now responsible personally himself, if he is personally involved in any negligence?—As every workman is to the others. Every workman in any service is responsible each to the other for any negligence.

1696. But the manager is only personally responsible

Mr. *Shaw Lefevre*—continued.

responsible when he has been personally implicated in the negligence?—Yes.

1697. Take a company employing a very large number of men in different branches of the business, and with a certain general manager, one who is not personally involved in each branch of the business, but exercising a certain control over the whole; take the case of a railway company for instance?—I should not like to give any opinion upon that question as relating to railways.

1698. I want to see whether your doctrine would carry you any length towards the views of the honourable Member for Stafford?—I began by extending my observations to other businesses; but I thought it would be more satisfactory to this Committee if each witness confined himself to his own particular business.

1699. You give an opinion that this change should be confined only to the principal manager of the business?—To the principal manager. I think I may say where there was more than one recognised manager, each manager being responsible separately, and particularly for his own branch of the business, there might be a question whether you would have two registrations, the registration of two managers instead of one.

1700. Take a business in which there are several branches, with one supreme manager over all, but each branch with a separate manager to itself, your proposal would still practically leave the owner without responsibility?—Only responsible for the act of the supreme manager.

1701. He would not be personally implicated in any particular case of negligence, would he?—Neither can any manager be implicated in the large number of cases of negligence which occur. They cannot be under the personal cognisance of the manager. I should say that wherever you have a principal manager over a large number of people, who act through sub-managers, under-managers, foremen, and others of that nature, the advantage to the workpeople of having the responsibility of the employer imposed upon that principal manager is that they can have recourse always to the principal manager in way of complaint; and if they do not like the principal manager's responsibility, they can leave the service.

Mr. *Knowles.*

1702. Your firm are chiefly engine and machine makers?—Yes.

1703. And how many departments have you connected with that, that is to say, different departments, the moulding, the fitting, the erecting, and so on?—I daresay we have 12 or 14 foremen over various departments, all acting under first of all, a general manager with an assistant-manager.

1704. You say that you think it would be just to extend the law so as to make a master responsible for the acts of a registered manager?—In the absence of the direction of the master.

1705. Now, at Sharp Stewart's large works would you consider yourself in that case the registered manager?—No.

1706. Whom would you consider so?—The man whom we call the general manager.

1707. Is he considered to have the daily supervision of the works?—He is.

1708. And is he never absent?—I hope he is. Sometimes we do allow a little holiday.

1709. In his absence you would put, I suppose, another manager, who would be responsible, in his stead?—No, because that is exactly analogous to the case of an employer himself. If I am an employer, I am not always there; but I am responsible for my negligent acts, whether I am there or not; and I would apply the same doctrine to the position of a registered manager.

Mr. *Knowles*—continued.

1710. You would hold him responsible for the works in his absence?—Yes.

1711. But do you not employ more than one manager to manage the whole of the 14 different departments?—He has an assistant; but he is simply legs and eyes for him; that is all. He has no power to direct independently of the general manager.

1712. The general manager takes the general supervision of the whole daily?—Yes.

1713. Now, in case of the law being extended to the point you have spoken of, do you think it would tend to lessen accidents?—I do not think it would have any material influence in either direction.

Chairman.

1714. Would you compel a master to employ a vice-master?—No; if the master chose to conduct his own business by himself, I would not compel any employment of a vice-master.

1715. Supposing that there is somebody whom, if I employ, I shall be liable for his actions, and that I have the choice of employing other people for whose actions I should not be liable, what do you think would be the result on my mind, would it not be that I should employ the person for whom I should not be liable?—I do not quite understand.

1716. Anything that the vice-master does that is wrong, the master is to be liable for?—Yes.

1717. Anything that any person below the vice-master does that is wrong, the master is not to be liable for?—No, he is not.

1718. Is not that an irresistible inducement to make the vice-master a mere man of straw, and to employ to do his work one of the people immediately under him?—I think the great inducement that the employer would have would be to get the best possible vice-master, because he is not only undertaking responsibility for his own acts, but for other people's acts. You speak of culpable negligence and compensation. The action of the vice-master involves, as far as culpable negligence goes, an action on the part of the person injured against the vice-master; and I am going to say now it shall be extended to the employer; if it is a matter for compensation the employer would still be responsible; and therefore the man of straw would not stand in his stead.

1719. Supposing I really registered him, and took care that he should do nothing, and I had a man below him, would not that completely elude your provision?—I think then, in case of an accident, or in case of damage, in any action arising, if that could be shown, probably the jury would say that the responsibility of the employer still existed.

1720. But it would not exist, would it; by the supposition that we are putting the master would not be liable for anybody's conduct, except that of the vice-master?—Of the registered vice-master.

1721. And if he took care not to employ a re-

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Chairman—continued.

gistered vice-master, he would not be liable at all, would he; he has one, I am supposing, whom he does not use, but puts him aside as an ornamental thing, and employs somebody else to do actually the work of the vice-master?—I do not think I can quite answer that question; but I think it very improbable that the question would arise, because I think the factory inspector might, in such a case, be empowered to say that the man registered as vice-master has no control, and does not interfere with the employment, and require the registration of the real manager.

1722. I want to ask another question: supposing that the Bill proposed to us were to be made into a law, that is to say, that the master should be made liable for workmen's negligence just in the same way as a man is for negligence of a menial servant; would not the effect of that be that there would be a contract entered into by the servant on his engagement that he would not take advantage of that law?—If it were allowed under the law certainly the first thing we should do would be to contract ourselves out of that liability.

1723. Is it at present open to any person to make any such contract?—It is at present.

Mr. *Tennant.*

1724. But you do not think, in practice, that any employer would set up a dummy manager, as has been suggested to you?—I think it is the most unlikely thing in the world to happen.

1725. Is it not the fact that managers of collieries are tantamount to registered managers?—I should prefer not to answer questions about collieries, because I am not well up in the Mines Regulation Act.

1726. You, in point of fact, would make the master responsible for this registered manager, just as the master is for his own acts, who manages his own works?—I would make the master liable for his registered manager's acts, just as for his own.

1727. You are at present under the Workshops Act?—Yes.

1728. You employ children, do you not?—No, we employ young persons.

1729. And the young persons come under the Factory Act?—Yes, but not to the same extent as in other works.

Mr. *Macdonald.*

1730. You have been asked a question regarding a dummy manager. If it was proved in a case that a person did not know whether there was a workshop there or not, or a mine there or not, or that coal was got there, and yet he was held by the court to be a legal manager, would you think that a wise decision?—I should think the court would not come to that conclusion. I should think there would be evidence brought by the workpeople in a case of that kind to show that the man whose name was up was not really manager at all, and that then ulterior proceedings would be taken.

1731. The case I refer to is the case of Wilson *v.* Merry and Cunningham. It was there proved distinctly that the person who was held to be the manager was never in the mine, knew nothing of it, did not know whether coal came out of the mine, and yet he was held in law to be the manager. Do you think that was a wise decision?—No; I should think the law ought to be more careful as to its definition of a manager.

Mr. *Eustace Smith.*

1732. As to incompetent workmen, you think that there should be some liability if a master employs notoriously incompetent workmen?—I think that the responsibility that rests upon him now should be continued.

1733. I suppose that your men, in fact, exercise some supervision over the people you employ?—Each one exercises supervision over another down through all the grades.

1734. But they not only exercise supervision over the way in which these people do their work, but as to whether they should be employed or not, do they not?—The only people who exercise supervision as to that are the foremen.

1735. I mean this: will your mechanics allow you to employ a man who has not been in the workshops or learned the business?—We fight that with them.

1736. Do you ever win?—Yes.

1737. If you, in a press of work, were to put on two or three stable-men into your machine shops, and an action were to ensue, do you think you ought to be liable for such an accident?—I think the law possibly, as it is, would make us liable; but I think that is so unlikely to happen that one need hardly consider the case.

1738. Have you not heard of men going out of a stable-yard to go down a coalmine, who have never been down a coalmine before?—No, I do not know anything of the working of coalmines, except what I have heard of the breaches of the law.

Mr. *Knowles.*

1739. I think you would admit that a man going out of a stable-yard into a mine would exercise as much discretion as a boy would the first time he goes into a mine?—I object to answer questions about mines, because I have no knowledge of them.

Mr. *Tennant.*

1740. You said you would rather like the inspector to give a preliminary opinion before an action was brought?—I did not suggest that, but I think it would not be objectionable; that has been already recognised by the law.

1741. Do you not think that might have a prejudicial effect another way; would it not almost stamp the case as being a proper case in which to afford compensation?—After all the judge and the jury coming after the inspector would have to judge whether the person was in fault.

1742. Do you advise that the inspector should give such a preliminary opinion?—No.

Mr. *Ripley.*

1743. You confined your observations and suggestions to such works as your own?—Yes.

1744. You did not want to give any opinion as to what might be the case with reference to managers appointed by owners of coalmines?—I said so.

1745. You have not considered the difficulties which might occur there?—I thought it safer for each of us to take our own particular line.

Mr. *Knowles.*

1746. You began, did you not, by saying that you employ a manager for Sharp, Stewart and Company?—I am a managing director, and we employ a manager.

Mr. HENRY WREN, called in; and Examined.

Chairman.

1747. WHAT are you?—I am an engineer and machinist.

1748. Are you a master?—Yes, I am an employer of labour.

1749. Where?—In Manchester. I have prepared a short statement to read to the Committee.

1750. Will you read it?—I am a partner in the firm of Wren and Hopkinson, London-road Iron Works, Manchester, engineers and machinists. I have been an employer more than 32 years. We have had accidents in our works, more or less serious, but have not been sued for damages through negligence, even though the accident may have revealed some latent defect or oversight. Accidents often arise from the heedlessness or over-confidence of the workman in methods and appliances which generally have been successfully used, but which may occasionally fail, such as accidents from belts, and from lifting tackle injudiciously applied; also from the failure of implements originally sufficient for their duty, which have from some cause deteriorated, such as decayed timber, strained or broken wheels and shafts, strained or burnt steam boilers, strained or broken chain-links, imperfect grindstones, &c.; but it may be said that mechanical engineering largely deals with the cutting of stubborn material into new forms, and the tools of the engineer, being severely tested as to their strength, may, without his knowledge and in spite of his careful inspection, sometimes break and injure the workman in charge. In our works we have no written or printed code of rules for the workmen; we think such cannot have the penalties for infringement invariably enforced by the foreman without occasional injustice; we therefore prefer to decide each case on its own merits, subject to the general rules and customs

Chairman—continued.

of our works; this appears to answer with our workmen; they know the tools they use, and rarely suffer from their abuse; besides, written instructions cannot be given to meet every possible case, and an attempt to generalise them might only reduce them into platitudes, whilst the omission of some instructions from a written code might be pleaded as a reason for disobedience to a practice which common sense and prudence approved and demanded; I therefore hold that it would not be proper to require that an employer should be liable for the consequences of an accident, because he had not posted written instructions or rules in his works. I think that in every works there should be someone who fulfils the customarily recognised duties of the employer to the public or to the workpeople; in most businesses the employer personally attends to his duties, but in some cases these are delegated to a manager, and the employer or employers only appear as owners or capitalists; in such cases I think that this manager should be registered as undertaking the responsibilities of the employer, but that this registration should not extend beyond some one registered manager, for in engineering works there are foremen and sub-foremen who have charge of men for specific work, and so to speak, the duties of these foremen overlap each other; one man's duty does not end where another begins; if more than one general manager be nominated, then endless diversity of responsibility and consequent litigation would ensue, and the present feeling of community of interest between employer and employed would be lost; the officers of trades unions and their legal advisers might direct their knowledge to maintain this litigation, and by their representatives in the workshops, they could easily collect from their club members' evidence supporting their views.

Mr. *H. Wren.*

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Mr. JOSEPH CRAVEN, called in; and Examined.

Chairman.

1751. WHAT is your employment?—Mechanical engineer.

1752. Where?—At Leeds.

1753. Were you summoned to attend this Committee?—Yes. I thought it better to confine the few observations I had to make to giving a few practical examples of accidents that have happened in our own works, not from the very beginning, but of more recent date. I have been an employer for 40 years, and am a partner in the firm of Smith, Beacock and Tannett, Victoria Foundry, Leeds. We manufacture engineers' and machine-makers' tools, and I find that accidents do occur from time to time, and we have had some of a fatal character, others of a serious, but the most of them have been of such a nature that the men or boys injured have, in a short time, been able to resume their work. I find that the accidents have, in the main, arisen from a variety of causes, and mostly those over which the employers, manager, or foreman can exercise no control, such as the breaking of chains, the upsetting of ladles with hot metal in the foundry, and men and boys

Chairman—continued.

getting injured by carelessly allowing their fingers to come too closely to the work being machined, either in the lathe, planing machine, drilling machine, or sometimes the grindstone. The more recent accidents that have taken place at our works have been occasioned in the following manner: First, a man who looked after a sand-mixing mill, whose duty was to charge the grinding-pan with sand, and a proportion of coal dust to mix the two together, was in the habit of taking the sand from the sides of the pan with his hands, and was told frequently that it was wrong for him to run this risk, and that he would be getting caught. He, however, paid no heed to the caution, and at last one of the rollers caught his arm, and seriously injured it, and he was taken to the hospital, and the wound took the wrong way, and the man died. Second, a moulder in the foundry was engaged on a piece of work that had to be rammed up in a pit for the purpose of casting a shaft on end to ensure its being sound, and when he just got the work about four feet from the top he was unhooking the chain by which it was lowered into its place, and he was reaching

J. *Craven.*

Mr. *J. Craven.*

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Chairman—continued.

reaching over from the side to the centre of the pit, and in doing this, he overbalanced himself, and fell against the iron box, and fractured his skull, from the effects of which he died. Now had the man taken the precaution to have put a plank across the part unfilled up, no accident could by possibility have happened. The factory inspector came in both the above cases, and inquired into them, and was satisfied that no fault at all rested with the management in either case. Third, another moulder was about to cast a casting, weighing about 15 cwt., and had the vessel in hand containing the molten metal, and told another man to lift the catch, and immediately this was done he let the metal upset on the floor; the result was that he was rather seriously burned, and had to be off his work for some time; and in the end the man consulted a solicitor, and claimed compensation; we resisted this, and finally the man gave up his claim, and came back to his employment.

1754. Will you allow me to ask the object with which you are reading these cases, because we are quite aware that accidents do happen?—It is just to show you what is the way in which these accidents practically happen. Fourth, one of the foremen was removing part of a machine, called the jib, of a radial drilling machine, on which was fitted a slide; the man slung the chain to the slide part, and it not being made sufficiently tight on the main part, as soon as all the weight came on the slide ran to the end, and the man tried to stop it, and the result was the man had three fingers taken clean off. It appears to me that no one could be held responsible in this case but the man himself; and, as far as I know, he never blamed anyone for the above accident; the man left our employment, took a beershop, and failed. The above appear to me to be fair samples of the various accidents that are continually happening in engineering and machine-making establishments, and they are about what you may always expect will, from the nature of the employment, occur. The employers in Leeds generally feel that the law, as it stands at present, is quite as stringent as it ought to be, and that in the present state of competition, they ought not to be brought under any further restrictions that would be likely to bring on litigation between them and the workmen. It is better for the workmen and their families to remain on good terms with the employers, and in the case of temporary injury, to return to their employment, than to enter upon litigation, which would not always produce to them the sums recovered from the masters; they would probably be idle during the litigation; they would get demoralised, and the proceeds would be soon squandered. Is it likely that men who are now careless would be less so when they know that those whom they injure will be compensated by the master?

Chairman—continued.

Mr. *Tennant.*

1755. You said that the inspector of factories had gone in two of the cases you referred to, and reported that there was no case against the master?—Yes.

1756. Were you aware that there was a clause in the Factory Act providing that the inspector could direct actions to be commenced against the master for accidents caused to the workpeople?—Yes, I was aware of that.

1757. Was it with reference to that that you said the inspector reported there was no case?—He reported, so far as I know, that he went away satisfied; he did not state any view that he held upon the case. But, of course, the case of the man who died came before a jury, and we sent the men who saw the occurrence, and they gave evidence as to how it occurred, and the jury brought in the verdict of accidental death at the coroner's inquest.

1758. There was no action tried?—No action. An action was commenced by one man, but he found that he had no case, and gave it up, and came back to his employment again.

1759. Then your idea is that the master should not be more responsible than he is now?—Certainly, that is our view in one particular trade; because you cannot prevent these accidents occurring from time to time. During the number of years that we have been in business there have been comparatively very few.

1760. You manage your concern?—Yes; the remarks made by the previous witness, so far as limited companies go, do not apply to us.

1761. You yourself are at this moment responsible for giving any wrongful orders?—Yes.

1762. Would you see any objection to this, that in those cases in which the masters did not look after their own affairs, but deputed that duty to some one else, they should be responsible for the acts of that man?—I should certainly say that, so far as my view goes, I should be willing to have an extension of the law to that extent.

Tuesday, 15*th May* 1877.

MEMBERS PRESENT:

Mr. Attorney General.
Mr. Gibson.
Mr. Hopwood.
Mr. Knowles.
Mr. Shaw Lefevre.
Mr. Lowe.
Mr. Macdonald.
Mr. Ripley.
Mr. Eustace Smith.
Mr. Tennant.

THE RIGHT HONOURABLE ROBERT LOWE, IN THE CHAIR.

Mr. WILLIAM BROWN, called in; and Examined.

Mr. *W. Brown.*
15 May 1877.

Chairman.

1763. WHAT is your occupation?—Miners' Agent.

1764. Where?—In North Staffordshire, at Stoke-upon-Trent.

1765. Are you aware of the subject which this Committee is to inquire into?—Yes.

1766. Have you anything that you would like to state about it?—Yes; I have a written statement.

1767. Will you read it?—I have had 25 years experience in coalmining. It is my opinion that the law providing for compensation in cases of accidents to workmen, and more particularly in mines, should be extended. I hold that employers, through their certificated managers, should be held responsible for the safety of the workmen employed under their management. I fail to see how a certificated manager can be considered a fellow workman. Many certificated managers seldom go down into the pits, but they give orders to their subordinates as to how certain works are to be carried on; and at some collieries there will be from six to a dozen, or more, under managers, who hold no certificate at all. In some cases certificated managers attend to the commercial affairs of their employers, and are regularly found "on change." Such being the case, it is no uncommon occurrence for them to be absent from the colliery several days in succession; and it is seldom they enter the mine more than once or twice a week. Such managers cannot, in my opinion, be classified as coworkmen. In North Staffordshire the collieries are worked principally with what are called "safety lamps;" which may be taken as proof that those having the management of these mines consider them to be very gaseous and dangerous. Notwithstanding this, a great number of unskilled workmen are employed, such as loaders, turnsmen, and odd men, who are paid at a very low rate of wages. I am of opinion that thousands of persons are employed in gaseous mines, which are worked purely on the lamp system, who could not tell the reason why they worked with lamps, and not with naked lights, were they asked to assign a reason. For many years past I have held the opinion that before any man is allowed to take a lamp, and commence working in a gaseous mine, he ought to pass some kind of examination which would prove to the satisfaction of the men employed in the same pit that their lives would not be imperilled by the employment of inexperienced men.

Chairman—continued.

1768. Is there not some examination now required for managers?—Yes, for managers, but not for workmen.

1769. You are speaking of workmen now?—I am speaking of workmen. Thousands of men are employed in our coalmines whom the certificated managers have never seen. Were employers made responsible for the due and proper performance by certificated and under managers of their respective duties, the following very important and beneficial results would, in my opinion, follow: (1.) Greater care would be taken by employers in selecting certificated and under managers. (2.) Increased care would be taken both by certificated and under managers in employing efficient workmen, and also in making better provision for the safety of such workmen. (3.) It is also my opinion that if the employer was held responsible for the acts of his certificated and other managers, blasting would be strictly prohibited where safety lamps are considered necessary for the comparative safety of the workmen. In this opinion I am strongly confirmed by the report of Mr. Wynne, Her Majesty's Inspector of Mines for North Staffordshire, for the year ending 31st December 1875, in which he says, "Although the fatal explosions of fire-damp are but three in number, the loss of life is very serious and lamentable; because, in my opinion, most of the accidents of this kind are preventible, and would not occur if the use of blasting powder in fiery mines was prohibited."

1770. Will you let me ask you on that, how would you propose then to win the coal if you did not allow blasting?—I would propose to win the coal by wedging in all mines where it is considered unsafe to work without safety lamps. After referring to the sad calamity at Bunker's Hill by which 43 lives were sacrificed, Mr. Wynne further says, "It is but just to myself to state that no blame attaches to me for this loss of life by explosions,

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explosions, for I have year after year pointed out the 'farce' of using locked lamps where the most dangerous of all lights is allowed (blasting), and therefore the awful responsibility of sanctioning a course that leads to such terrible losses of life rests on other heads and not on mine." And, further, he says, "It is some satisfaction to know that nothing would induce the proprietors of the Bunker's Hill Colliery to resume the use of gunpowder; but a very natural question arises whether it be advisable to allow these dire calamities to take place, destroying hundreds of valuable lives which, in the opinion of many persons, are preventible, by the simple prohibition of the use of explosives in fiery mines? or in homely phrase to 'lock the stable door before the steed is stolen.'"

1771. Then what do I understand to be your recommendation exactly?—My recommendation would be in all mines, where naked lights are not allowed, to prohibit blasting with gunpowder.

1772. You see that it is not the question we are here to inquire into; the question is as to whom you would make liable for negligence; I want to know that?—I would make the colliery managers, the managers of all kinds, right away from the certificated manager down to the lowest subordinate in connection with collieries liable.

1773. You would make the master liable for them, as I understand you?—I would make the master liable for their actions.

1774. You are aware that they are all already liable themselves?—Yes, I am aware that they are liable to some extent; but I would make the employer liable to have to allow compensation to those who suffer any loss or inconvenience by accidents which take place in mines.

1775. And how far would you carry that down?—I would carry it down to the lowest person that was considered to be a manager, a manager of any kind.

1776. You would not carry it down to the ordinary workmen; you would not make the master responsible for the act of the ordinary workman; for instance, if he uncovered his lamp, or would you make him responsible in that case?—I would make the employer responsible where the ordinary workman worked under the supervision of the manager.

1777. But they all work under supervision of some kind, do not they?—Yes, supervision of some kind.

1778. What do you mean by "of the manager" then; do you mean of the superior manager or of some person exercising authority under him?—I mean working by the orders of any person who was under the certificated manager. I consider that the employer ought to be responsible for the acts of his manager, whether they are certificated managers or otherwise.

1779. Supposing a man were to uncover his lamp without the managers having anything to do with it, would you make the master responsible then?—In that case it would look very hard to make the employers responsible; but still it is my opinion that if more care was taken as to what kind of men were employed in the mines there would hardly be such a thing take place as a man uncovering his lamp.

1780. Then you would make the master responsible in that case, would you?—I would make the master responsible.

Mr. *Tennant.*

1781. As I understood you when you read your statement, you said you would make the master responsible if he did not employ competent people; but do you mean that if he did employ competent managers and sub-managers, and there were proper orders issued for the workings of the pit, and then those orders were disobeyed, and wilfully disobeyed, you would then make the master responsible?—If the orders could be proved to have been disobeyed that would appear to me to be an injustice.

1782. That is exactly what I wanted to ascertain; then you would not make the master responsible in the case of wilful disobedience of orders?—If it could be proved that it had been wilful disobedience to orders I do not know that I would.

1783. If it were such a case as this, for instance, if it were one of the orders that you are not to open the door of your safety lamp, and a man does open the door of his safety lamp, either in order that he may see better, or to light his pipe, or for any other purpose, and an accident then occurs, would you say that was a wilful disobedience of orders?—Well on the face of it it would look to be something like disobeying the orders of the manager; but I am not quite sure even in that case that it would be right to let the employer go scot free; because I know of my own knowledge that great care ought to be taken in employing workmen in the mines. Thousands of men are employed in the mines at the present time whom the certificated manager never sees, or the employer either.

1784. Then how would you suggest that the master should know that the workpeople whom he employs are competent?—I would suggest that at all pits where the works have to be carried on the lamp system an examination should be made as to whether men who presented themselves for work knew the reason why they worked with safety lamps, and not with naked lights. I am convinced that thousands of men work in the pits now who could not tell the reason why safety lamps are used, and not naked lights; and that is the reason, in my opinion, why so many men's lives are imperilled.

1785. Then do you suggest that some examination should take place before some public official?—I suggest that several men at each pit should be appointed by the men themselves to examine any man or men whom they do not know, prior to their presenting themselves for work before they commence work there. You see if a mower while whetting his own scythe cuts his own hand or arm he only injures himself; but an inexperienced workman in a mine by his inefficiency or ignorance, or recklessness, if he takes off the top of his lamp or injures his lamp in any way, and an explosion occurs, may be the means of hundreds of lives being destroyed, and very much valuable property.

1786. But the man with the scythe might put it into somebody else's leg if he were a careless user of it?—I do not see that.

1787. I have seen such cases myself; does your remark therefore apply?—Supposing he did he would not injure many more besides himself; but you see what I am driving at, that one ignorant or inconsiderate, or inexperienced person (whichever way we put it), may expunge the means of not only destroying his own life, but he

Mr. *Tennant*—continued.

he may destroy the lives of hundreds around him.

1788. But you surely would not contend that supposing one man alone had his leg cut off he had no right to any remedy; you would not confine it to cases of a large slaughter, a large number of lives being lost?—No, I would carry it to every case.

1789. Take the case of the mower and the scythe; would you say that the master who employed a man who carelessly used his scythe and cut another man's leg should be liable?—No, I would not.

1790. Now, supposing then that in the gaseous mines there was a prior examination such as you suggested, and supposing the master employed none other than men who were declared to have a knowledge of the use of the safety-lamp, such as you have mentioned, would you then say that if an accident happened, and it happened by a man doing something which he knew was not right, the master ought to be held responsible?—Under certain circumstances.

1791. Even if he had employed a competent man who had passed an examination by his fellow workmen?—Yes; because my knowledge of mining convinces me that no explosion can take place if the Mines Act be carried out in its entirety, where it states that noxious gases shall be rendered harmless by sufficient ventilation.

1792. But you see that can be done by the law now. The law at this moment punishes those who do not comply with the provisions of the Mines Regulation Act; but I am supposing now, carrying out your own idea, that these people pass an examination, and are then put on to be employed by the master, and that in direct contravention of his orders, or the manager's orders, they do something which causes an accident and a lot of people are killed, I ask, would you in that case make the master responsible?—I think it would be right to do so, because, you see, it is impossible (I am speaking now of explosions) for an explosion to take place if gas is rendered harmless.

1793. Then what is the great efficacy of this previous examination, if it is not to have the effect of making the master not responsible, or making the pit more safe; what good is going to be derived from this previous examination?—The good, in my opinion, that will be derived, will be that it will be the means of preventing a great number of accidents. I am convinced that if the employers alone were made liable we should have more efficient management, and accidents would be of rare occurrence.

1794. You have been referring now to these gaseous mines; but supposing a mine where there is no gas, would you have the same stringent provisions as to the employment of getters of coal?—Yes. I do not think that any law can be too stringent to make the employers liable.

1795. Then you would make no difference between a gaseous mine and a mine with no gas?—No, I would make no difference at all.

1796. You would have an examination in each case?—Yes, in every case.

1797. You said you would make the master responsible in the event of explosions; would you make the master responsible in the event of one workman injuring another workman in the actual getting of coal?—I suppose you mean if a man was holding a drill and another man striking the drill, and he should injure the man that was holding the drill. I do not think I should; I cannot see how an employer would be responsible for a man missing his mark and hitting a man over his head.

1798. Do you think he should be any more responsible if that workman, instead of missing his mark and striking another man, opened his safety lamp and blew up the mine?—Yes, I do; I think there is a great deal of difference.

Mr. *Macdonald.*

1799. You have been asked a question with regard to taking off the top of the safety lamp; if a man wilfully took the top off the safety lamp, a man who knew the danger of the safety lamp, do you think it would be fair to make the owner responsible for the act of that man, if he should injure a fellow man?—As I said before, it would look a very hard case, but it would go to prove, if an explosion occurred by his taking off the top of his safety lamp, that gas had existed in the place, or no explosion could have taken place.

1800. Then your opinion is, as I gather it, that it is the condition of the mine which leads to the explosion, rather than the act of taking off the top of the lamp?—You may take off a thousand lamp tops, if there is no gas there can be no explosion.

1801. And you think that wherever the mine is full of gas, so that it does explode, the owner should be responsible for any act done, no matter who does it, if an explosion takes place?—Most certainly, I do.

1802. You believe that that would have a tendency to make owners more careful in selecting managers and men as well?—I do; and it is my opinion that if that was carried out, where we have had ten explosions in the past we should not have one in the future.

1803. We have had it stated here, that if the law was to be altered the tendency would be to make men more reckless, and that there would be more accidents; do you think that that would be a result if the law was extended to the owner being responsible for the acts of the manager?—Not at all. I do not think any such thing. I do not think that any allowance, or any amount of money, would have the least influence over a man in making him more reckless in any way whatever; and my reason for saying that is this, a man by running the risk of injuring himself for the sake of compensation could not tell whether he was going to be injured, or whether he was going to be killed outright.

1804. As one who has worked for a long period of his life in mines, did it ever enter your head, or enter your conception, that if there was an accident, and the owner was responsible for it, and you would get compensation, you ought to be reckless?—Not at all.

1805. You have met with a good many men both in Yorkshire, where you belong to, and in Staffordshire, have you ever met with a man, or heard an expression used, that would lead you to infer that men would be reckless because compensation was to be given?—Not in the least.

1806. In your experience as a workman (and I know that you have had long experience of workmen), did you ever see a man who reck-

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Mr. *Macdonald*—continued.

lessly destroyed himself, or destroyed his fellow men, even without the idea of compensation?—No.

1807. Then if such is stated that men would recklessly, in consequence of compensation being awarded, do things that would lead to the destruction of their fellow men and themselves, would you think it a slander, or would you think it a true statement?—I think it is a slander, and I am very sorry that such a statement has been made.

1808. Am I to understand you to say, that you would hold the owner responsible if an injury was caused by the orders of a deputy, by the orders of a fire-trier, by the orders of an engineer, by the orders of a pit head man, all of whom are performing separate duties in the carrying on of the work?—Yes; I would make the employers responsible for the actions of all those men, and I will give you my reasons why I would make them responsible; because the orders to the workman come more directly through the deputy, or a manager above the deputy, or those standing between the certificated manager and the employer, or the lowest subordinate manager; the workmen get their orders direct, as a rule, through these men, and not through the certificated manager, or the employer.

1809. It has been stated that workmen have more power over each other, and are better able to control each other, than the employer; is it the case that the pit head man, or banksman, conducts his part of the common duty under statutory law; that his duties are defined by the special rules?—Yes.

1810. Has the workman, the collier or the coalgetter, any right to interfere with the pit head man, directly or indirectly; would it not be a violation of those special rules if he did so? For every manager below the head manager it would.

1811. For every workman, I am asking?—Every workman has to obey the underground managers, and I am not aware that any top manager proper has anything to do with ordering as to how work shall be done at the bottom.

1812. But you fail to see the bearing of my question; has the miner anything to do whatever with the conduct of the banksman?—Nothing whatever.

1813. Has the miner anything to do whatever with the conduct of the engineer, or the engine man, or the engine tender?—None whatever.

1814. Dare he enter the engine-house, under a penalty of 2*l.*, or two calendar months' imprisonment; is not that a special rule?—It is a special rule; and we had a man in my district prosecuted a very short time ago for entering the engine-house.

1815. Dare the workman enter any place until he is ordered by the fire-trier in the morning, under a penalty of 2*l.*, or two calendar months' imprisonment?—If he dares to enter, he has to bear the consequences; he would be fined for so doing.

1816. So that under the law, under the special rules of the Mines Act, each person has his duty assigned to him?—Yes.

1817. Were he to interfere, directly or indirectly, with another man in the performance of his duty, would he not be rendering himself liable to 2*l.* penalty, or two calendar months' imprisonment?—If he was known to do so, he would. If he was known to go out of his own place into another man's place, he would certainly be fined for so doing.

1818. Or in any way interfering?—Or in any way interfering.

Mr. *Ripley.*

1819. We will change the scene, and take a series of boilers, say eight or 10 land-boilers placed alongside of each other, and suppose that an engineman has been selected by the owner, competent for the work, who should have charge of these boilers primarily, and that he has under him again two or three firemen, as the case may be, who have been long engaged in that work; that his firemen had proper water gauges, and every appliance desirable and necessary for seeing to the safety of the boilers; and that one of them carelessly lets the water run down his boiler, and he then suddenly, seeing what he has done, turns it on, and an explosion takes place, and he is killed or his fellow workmen are killed; would you hold the master in that case responsible for the act?—Personally, I would.

Chairman.

1820. What do you mean by "personally"?—What I mean is, that personally I would hold the employer responsible; because I hold that the employer would have a chance of defending himself if he thought he was not responsible, and I think that it is right that every employer should prove that he was not to blame in any sense whatever, even when an explosion of a boiler or boilers occurs.

Mr. *Ripley.*

1821. I am going upon the supposition that the boilers are in a perfectly sound and unquestionable condition; that the engineman who is selected is a man above suspicion of any kind, a careful and steady man, and that the men under him have been long employed in the same way; I do not quite see what you mean by making him personally responsible; do you mean that you would allow an action to be commenced, and that he should prove that all these things were precisely as I have stated them?—Yes.

1822. And that having proved them, you would exonerate him from responsibility?—I presume the law would do that.

1823. What is suggested by the Bill which has been before the House is, that the master should be responsible, irrespective of the condition of the apparatus, irrespective of the quality of the men who were employed, that he should be absolutely responsible for an accident which should happen under such circumstances?—You will excuse me, but I fail to see that your supposition is a well-grounded supposition. I do not know that ever I have read of a boiler explosion, but it has invariably been found that there has been some failing place in the boiler, either more or less.

1824. I could give you cases of thoroughly new, sound, almost new boilers, which have exploded in consequence of the carelessness of men, and many of these explosions do happen from the man in charge of the boiler carelessly allowing the water to run down, and then suddenly seeing what

Mr. *Ripley*—continued.

what he has done, turning the water on to the red-hot plates?—It would look a hard case to make an employer responsible for an act of that sort, but still I think it is right that the employer should prove his innocence.

1825. Prove that everything was in the condition I have stated?—Yes.

1826. And doing so you would think he was not to blame?—I must answer the question the same as I did before, I think that no jury would award damages.

1827. In the Bill before the House it is intended that an employer should be liable under any circumstances whatever; now would you think that fair or right?—I think that the employer should be liable.

1828. Whether he is to blame or not?—I would not say whether he is to blame or not; I could not say whether he is to blame or not.

1829. Then you must agree with me?—Well, I agreed with you as far as what I believe to be right, but I believe this that the law of compensation should be amended, should be extended, for I am convinced that there is not that precaution taken, neither above ground nor below ground, that there ought to be, and would be if the employers were made liable and responsible.

1830. But the law makes him now liable, you see, in cases of accident precisely in the state of things that I have named to you; does not the law make him liable now?—No, not very much, I think, when they hold that a certificated manager, who may be four or five days a week away from the colliery altogether, is a fellow servant; I cannot see how he can be reckoned a fellow workman. I never can see how a certificated manager, who may not go down the pit more than once or twice a week, can be reckoned a fellow workman with the man who goes down at half-past five in the morning and is down the pit nine or ten hours each day six days in the week, I cannot see how he can be reckoned a fellow workman with him at all.

1831. I was calling your attention to the case of an employer being liable for the accidents which may happen to any workman in his employ, when he is proved to have taken every possible precaution to manage his works well, and to have proper people superintending them; do you or do you not think that an employer, whether he is an employer of men who are working in collieries, or in ironworks, or in any other description of work, having in case of need proved distinctly that he has selected his head manager carefully, that all his sub-managers have been carefully selected, and that he has given his orders to the best of his ability for the safety of his workmen, if an accident should happen in any of these cases, either above or under ground, by the carelessness of the workmen themselves, or even of some of the under managers, should be held responsible?—I shall be obliged to answer that question in this way: no matter what I would do personally, it is my opinion that no jury would give any compensation if such facts could be proved.

1832. Are you not aware that under the Bill brought in by the honourable Member for Stafford it is not intended that any jury should have any choice in the matter?—I do not know what is intended; I can only judge from what is said in the Bill.

Mr. *Ripley*—continued.

1833. Would you think that that is fair?—I should not think it fair if the employer had done all he could, if the certificated manager had done all he could, and every subordinate manager had done all he could, and then a reckless workman caused an explosion which injured workmen or killed them instantaneously, I would not hold that fair, and I do not understand the Bill to mean that by what the Bill states.

Mr. *Shaw Lefevre.*

1834. In the case just put to you by the honourable Member, where he supposes a case of negligence on the part of one of the men engaged in superintending the boilers, let me also ask whether the owner would not now be liable if any one of the public was injured through the explosion, not one of his servants, but if any member of the public passing by was injured by the explosion of the boiler; do you know whether that is the law now?—I do not know, but I think he would.

1835. Assuming that that is the state of the law, do you see any reason for the law making a distinction between one of the public and one of the servants of the same employer who is not connected with that branch of the business?—One of the public passing by when an explosion takes place cannot be held responsible in any way whatever for the explosion of the boiler, and I think that, in all fairness, compensation ought, to be given in a case like that.

1836. I will assume for the moment that the law does give such a man compensation; now what I want to ask you is this, why the law should make any distinction between the case of such a man and another man employed by the owner of the boiler, but in no way concerned in that particular branch of the business?—I can only draw the illustration (it is a rather far-fetched question) this way, that if through the negligence of an engine driver a stoker is injured, of course, as the law stands now, there would be no compensation; but if through the negligence of an engine driver anyone of the public outside the railway company's service were injured, very likely they could get compensation.

1837. I want to know whether, in your opinion, the law should draw any distinction between one of the public and one of the servants of the same owner, or company, who is not in any way concerned in that particular part of the business, and therefore has no control over the particular man whose negligence has caused the accident?—Well, I cannot answer that question.

Mr. *Knowles.*

1838. You told us that you have worked in a mine 25 years. Have you ever had the management of a mine?—No.

1839. In no department?—No; I have never had anything to do with the actual management of a mine. I have had to do with trying to manage workmen.

1840. How long is it since you worked in a mine?—About 14 years.

1841. Since then you have been what?—I have been about 11½ years a miners' agent.

1842. What were you before?—I was in business for myself as a general dealer.

1843. And you have been 11½ years trying to manage men?—Yes; I wish to convey the idea

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to you that in the mine I was several years trying to manage the men.

1844. But in trying to manage the men in the mine, were you engaged for that purpose?—Yes; it was my business to see, for a long time, that every man had his turn, that is, his fair share of tubs, and to see that all the boys attended to their work; but I never had anything to do with ventilation, or anything of that kind.

1845. Then you have told us that there are a great many unskilled men employed in the mines at low wages; can you tell the Committee about what wages those men get?—Speaking of my own district, from 4 *s.* a day downwards to as low as 3 *s.* 6 *d.*, and in some cases (but I do not say the general cases), 3 *s.* 4 *d.*

1846. And are there none above 4 *s.*?—Yes, but I am now speaking of loaders.

1847. But I am speaking of the unskilled men, loaders, and men of that class that work in the mine that you refer to?—I do not know any with us that have more than 4 *s.*

1848. Now you have told us that these men knew nothing about the use of a lamp in any way or shape, or why it was used; how long, from your experience, do you think it would take to teach a man the use of a lamp?—It would depend a good deal on his own intelligence. I consider myself that it takes a man a long time to understand how to use a lamp; but my reason for making that statement is this: thousands of men, who have never been near a pit before, go and ask for work, and they are set on, and a lamp given into their hands, and when they get the lamp they have been supposed to understand that all would be right. Now, I say that such men have no business with a lamp.

1849. But men or boys must begin working in a pit at some age as strangers, and a man beginning then would know as much about the lamp as the boy does when he commences, would he not?—I should think he would, and he would know no more.

1850. But are these men put to work in a mine without anyone with them who does understand the lamp?—In many places they are.

1851. But at once, without having any experienced men with them?—I should think so. For instance, a man is said to load; he not only has to load but what we call in North Staffordshire draw the coal, and in Yorkshire it is called hurrying the coal; and of course he leaves the man that he loads for, and may travel from him 100 yards away or more, and he is nearly as much away from the man, and by himself, as he is with the man he loads for.

1852. But there are men who examine those loads who understand the use of the lamp?—Yes, but they are not always with the men. I consider that when a man has a lamp given into his hand, and that man is known to be inexperienced, he should be in the care of other men, or another man, until he really does understand the use of a lamp.

1853. Did you ever work in a mine where lamps were used, and that made gas?—Yes.

1854. Then you must have some knowledge of how long it would take a man to understand the use of a lamp?—It did not take me very long to understand the use of a lamp; but I am persuaded that there are hundreds or thousands of men working in a pit now who do not understand it yet.

Mr. *Knowles*—continued.

1855. How long did it take you to understand it, when you first began to use it?—Before I began to use a lamp, I had been working in the pit for many years, and I had seen lamps occasionally used; and I have not only tried places with the lamp, but I had been with others who had tried places with the lamp; and when I went to work at a pit where lamps were used more extensively, I did know the use of lamps.

1856. Providing you were to undertake to show a man the use of a lamp, and how to try a place and see whether there was any gas, how long would it take you to teach a man of ordinary intelligence, do you suppose?—It would not take me very long; but if you are going on the assumption that a training like that takes place in every mine, that would be right enough.

1857. No; but, according to your own evidence, you suggest that they should have some training. Now, assuming that they had to be trained, how long would it take to teach a man of ordinary intelligence the use of a lamp, and how he could try a place and find gas?—A great deal would depend upon the place. Where there was very little gas, the man might be trusted with a lamp almost immediately after his going down into the pit; but where the mines are very much filled with gas (and the mines vary a great deal), it takes a man well skilled to understand how to use a lamp efficiently, and effectively, and safely.

1858. Yes; but you have not answered my question about how long it would take to teach a man the use of a lamp?—It would a great deal depend upon the nature of the mine.

1859. How long, under any ordinary circumstances; supposing there was gas in a place, and you wished to teach a man how to find it, how to try it, and how to use his lamp, how long would it take?—It would not take a man a long time to understand when the gas drew the blaze. Where there is gas, and the man tries the place to see whether there is gas or not, if there is gas, it draws up the lamp-blaze. Now, it depends how it draws it, and the very best of men have been deceived when they have been trying very gaseous places.

1860. Now, would you explain to the Committee how you would commence to try a place with a lamp, to ascertain if there was gas in it?—If I was jealous that gas was lurking in the galleries, or in the drifts, or in the place, I should simply at first put my lamp down on the floor, and I should keep raising it to the top, without it went off before it got to the top; and then I should go back, for fear it would burst my lamp.

1861. Would you draw the wick down?—Yes, I would draw the wick down; and if it was very dangerous, I should put it out altogether.

1862. Would you pull the wick down in order to try it?—I would just put it so that there would be enough to be drawn, so that I could have a fair test; but I have seen lamp-gauze red-hot many a time in a day; and I have often thought, when there have been explosions, that it has been on account, sometimes, of lamp-gauze being hot, and very likely bursting by being hot.

1863. But have you ever heard of such a case, since the passing of the last Mines Act of 1872,

as

Mr. *Knowles*—continued.

as a lamp becoming red-hot in the way you have described in any colliery?—I cannot say that I have heard of such a thing as a lamp being red-hot, personally; but I should think it is more than probable that thousands have been red-hot, since it is no uncommon occurrence for lamp-gauze to be red-hot.

1864. Do you think that it would conduce to the safety of the mines at all, if they were all worked with lamps, instead of being worked partly with lamps and partly with candles?—You have asked me a very important question; it is my opinion that it would conduce to the safety of the men if all mines were made so that they could be worked with naked lights.

1865. Do you think that is possible?—Yes, I do.

1866. How would it be possible?—It would be possible by sinking more shafts, having three or four shafts where we have only one, and letting the air have less work, and not charging it so fully with gas.

1867. But have you never seen that in very limited workings indeed they make gas?—Yes, with a limited amount of air as well.

1868. But the air does not prevent the gas being made, does it?—No, but the air dilutes it.

1869. You say that if the Mines Act were carried out, and every part was rendered perfectly safe when a man goes to his work, that would prevent explosions. That is the Mines Act, that every place shall be properly ventilated before a man is permitted to work; and you say that if it were properly carried out, that would prevent explosions?—I could not say it would absolutely prevent them, but they would be of more rare occurrence.

1870. But, taking the great number of deaths which occur in consequence of accidents in mines, they do not all take place from explosions, do they?—No, not one half of the men that are killed are killed by explosions.

1871. I think you stated in your evidence that it would be impossible for an explosion to occur if the Mines Act was carried out?—If the gas was rendered harmless, there could not possibly be an explosion.

1872. But before it becomes explosive it has to be mixed with a certain quantity of atmospheric air, has it not?—Yes.

1873. And if it happens to come in contact with a light just at that point, there will be an explosion?—Yes; if there is just air enough to mix with it, and make it explosive, then we must expect that we shall have an explosion; but if there is sufficient air to render it harmless, we shall have no explosion.

1874. But supposing you have ten times as much air as is ordinarily required to ventilate the mine and to make it safe, that gas would come to an explosive point all the more quickly, would it not?—The gas would be moved on; gas is a great deal lighter than air, and where there is a sufficient amount of ventilation the gas cannot stop the thousandth part of an instant.

1875. Then, in your experience, the air moves it off, and it cannot mix with it?—It moves it off, and it may mix with it, but still it renders it harmless.

1876. Now, you have given us some evidence of Mr. Wynne's, the inspector, or referred to

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some of his remarks, as to the use of blasting powder; are you not aware that there is a difference of opinion between him and the other inspectors on that point?—There may be a difference of opinion, but that does not prove Mr. Wynne wrong.

1877. Does it prove the others wrong?—I should think so.

1878. Are you aware that the Home Secretary had a conference with them on that subject last year?—I am not aware of it.

1879. As regards injury caused by one man to another, you have been asked several questions by one honourable Member; but if three men were working together in one place (as you have seen, I have no doubt), and one man carelessly knocked a prop out, and let the roof down and killed the other two, would you then hold the master responsible for that?—Well, you will excuse me, I suppose, but I am not quite sure whether that is a useful question or not; because I never saw such a thing as a man knock a prop down, or make an attempt to knock a prop down to bury two other men.

1880. Not in order to bury them; but I mean, if, by knocking it down, they were injured; I do not mean to imply that any man alive would do so wilfully in order to injure others?—I would answer that question in this way: when a man is appointed to knock props out, it is not expected that any other men will be near him; consequently I cannot see that that question has any bearing. There are men appointed specially to knock out props, or there are supposed to be, and to set props too.

1881. Have you never known a case of a collier or a workman knocking out a prop sometimes, and probably he wished to knock it out, without seeing that there is any defect in the roof; and then the roof has fallen when he has not expected it, and has injured others?—I have never seen anything of that sort myself; I have heard tell of such a thing, but I have never seen it myself; I have known accidents occur through props not being put up at the proper time.

1882. Have you never heard of accidents occurring in consequence of the props being knocked out: say a man wants to take a prop out, and thinks the roof is safe, and knocks it out, and, without there being any visible defect, the roof falls and injures somebody; would you then hold the master responsible for that?—I cannot answer that question in any other way than this: I would hold him responsible until it had been proved that he had nothing whatever to do with it, and it could not be avoided.

1883. Now, you said that the man had no power to go into the engine-house, and no right to go there, or to any other place besides his own, subject to a fine or imprisonment under the Mines Act: do you not know that, under the Mines Act, the workmen themselves have power to depute some of their own body to examine any part or all the mine, and the machinery, and everything connected with it?—I know they have power to do so, but I am not quite sure that that power assists the men very much, because I and another might examine the workings of a mine one day, and we might pronounce everything to be right, but the next day things might be wrong.

1884. Might

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1884. Might they not be wrong in an hour after you examined them?—Yes.

1885. Would not that apply in the same way to a manager; after the manager had examined them and seen that all was safe, might they not be wrong in an hour afterwards; would not that apply to him equally?—No, I do not see that that applies to him. What I understand about two men examining the mine is this: if I understand the Act rightly, it says that two men or more can be appointed to examine a mine at certain times; it may be as often as they please, and they may go through all the air-courses, and they may find everything right; but then there might be some deficiency the next day, or in two or three days afterwards, by the bratticing not being put up as the work is proceeded with, or a hundred other things.

1886. Then, if the men were to go into the engine-houses, or any other places, such men as are deputed by the workmen to see that the machinery and everything is in proper order and working order; those men would not be fined under the Mines Act, would they?—If they got permission to go and examine the machinery, they would not.

1887. But the Act empowers them, does it not, to do that?—I am not aware that the Act empowers men to go in and examine the machinery any time they like. I think they would have to have an order from the manager any time that they wished to do so.

1888. The Act prescribes what they shall do at any time when they wish to do it?—I think the Act provides as to what they shall request to do; but I do not think that any men have the right, within the meaning of the Act, to demand the key of the engine-house, and go into it any time they like.

1889. Is the engine-house locked?—Yes.

1890. Always locked in the daytime?—No, I do not know that it is locked in the daytime; but if the men be prevented from going in, that is the same thing; and an engine-driver or minder is not allowed to let anyone open the door, I believe not even the manager himself.

1891. You will admit that that is done so that the engineman's attention may not be taken from his work, and, therefore, that conduces to safety?—Yes; I find no fault with that.

1892. But in the event of men being appointed by their own body to examine the engine and the machinery, and the works connected with their own safety, have you ever known a case where they have been refused to be permitted?—I have not.

1893. Do you know whether they have ever availed themselves of the power given them in the Mines Act; have you ever known them to avail themselves of the power they have under the 30th general rule in the Mines Act?—So far as inspecting the mines in the internal workings is concerned, I have; but I do not know as to any examinations being made of machinery above-ground.

1894. But if they have the power to do it, of course it is their own fault if they have not examined it?—Just so.

1895. As to doing away with blasting, I will ask you this, as a practical man (I have rather a theory about it in my own mind); do you think

Mr. *Knowles*—continued.

that the use of cartridges, instead of loose powder, has conduced to the safety of mines; I do not know whether you have considered that or not?—Before the Mines Act of 1872 was passed, I never charged a hole myself with anything else but cartridges, from choice; I considered them always safer than loose powder.

1896. And you do yet?—Yes, I do yet.

1897. Have you considered what would be the extra cost of getting coal, provided it was wedged, as you describe, instead of blasted?—In some mines the cost of getting the coal would be nothing more, but in others it would; it would increase the cost a little, but my experience as a practical miner leads me to know that more large coal is brought down by wedges, than by powder; that it is better holed and better cut, and it gives it a chance then to weight itself; but where powder is in use, it is not only used, but it is abused, for the coal in many places is not properly holed and not properly cut; and that is the reason we have so many what are called fast shots, or blown-out shots.

1898. Do not you think that those blown-out shots sometimes arise in consequence of its being made up in cartridges, and those cartridges not getting rammed at the back of the hole; I am asking you this because I know you are a practical man, and I wish to get your opinion?—It is possible that a blown-out shot may take place from the cartridge not being rammed properly up, but it is not at all probable. It is my opinion that where we have a blown-out shot, in 99 cases out of every 100 it is on account, not of the hole, or of the stemming not being well stemmed, but on account of the powder having more to do than it ought to do.

1899. Do they cut the coal generally in your district?—Thousands of tons of coal are blown out without ever being cut or holed at all.

1900. Do you think that there are many men working in mines now as colliers that could not get the coal without blasting?—There are thousands of men that could not get their bread in the mine if they had to get coal without powder.

1901. It would be too laborious for them, you mean?—Yes, they would not like it.

1902. Do you think that the present Mines Act has improved the management of collieries at all, in consequence of their having to have certificated managers, and all that sort of thing?—Well, I should not like to say it had not improved it at all, but I am sorry to say that I do not think the improvement is as great as is desirable. You will excuse me if I say really what I do think; I am afraid that many of the certificated managers are too great, that they do not like to go down the pits so very often; they would rather order other people to do the work, and they stop at the top themselves.

1903. Of course you know who it was that suggested these certificated managers when the Bill was passing through the House?—Yes, and I have nothing whatever to say against certificated managers; but I am afraid that in some cases, I do not say in all, it is a little abused.

1904. But they have to pass an examination, the examination of a Board, consisting of engineers, inspectors, representatives of the men themselves, and others?—Yes.

1905. And if they cannot pass that examination,

Mr. *Knowles*—continued.

tion, of course their certificate would be refused?—Yes, I suppose so.

1906. Have you ever known an instance of the men's representatives making any protest against anybody having a certificate in consequence of not passing a satisfactory examination?—No, I do not know any case of the kind.

Chairman.

1907. I wish to read you a portion of the Order of Reference of this Committee, and ask you a question on it. It is referred to this Committee to inquire "whether it may be expedient to render masters liable for injuries occasioned to their servants by the negligent acts of certificated managers of collieries, managers, foremen, and others, to whom the general control and superintendence of workshops and works is committed." Does that appear to you to include the man who is working in the mine, about whom you have been asked, the common labourer who is working under orders; do you consider that those words include the common labourer, or are they confined to managers of some kind or another?—I think it means the common labourer.

Mr. *Tennant.*

1908. I should just like to make this quite clear. The principle on which you ground your reason for saying that the master should be responsible to his servants in the event of explosions is, that the master has neglected his duty in not having the mine properly ventilated; is not that so, that you think explosions could not

Mr. *Tennant*—continued.

take place if the master performed his duty?—I do not see how an explosion could take place if the mine was properly ventilated, and the gas rendered harmless.

1909. But the question is this: do you think the master should be responsible because the mine is not properly ventilated, and that if the master had done his duty it would have been properly ventilated; that he has neglected his duty, and therefore you would make him responsible?—Yes, I would.

1910. But that is your ground?—Yes.

1911. Then you say that you would make the master responsible, unless he could prove that the accident was unavoidable, or was not attributable to his neglect, or his orders?—I do.

1912. But, if he could prove that the accident was not attributable to either his neglect or his orders, and that it was unavoidable, then you would say that the master ought not to be responsible?—Well, a jury would say that without me.

1913. But what would you say?—I should not think that a man ought to be responsible for what he could not help after doing his best.

Mr. *Macdonald.*

1914. You were asked the question if the other inspectors differed from Mr. Wynne as to blasting powder; did not nine out of the twelve inspectors agree with Mr. Wynne in a report to the Home Office some time ago in respect to the use of blasting powder?—I really cannot answer the question.

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The Right Hon. Sir WILLIAM BALIOL BRETT (Lord Justice of Appeal), Examined.

Chairman.

1915. WOULD you have the kindness to give us your view of the law of liability between masters and servants for the injuries received by their servants, which it is the object of this Committee to inquire into?—An injury to a workman I think arises generally, from the intrinsic danger of the employment or work to be done; or from some defect in the plant or machinery; or from the want of skill, or the negligence, of another workman; or from the negligence of the workman himself. In the first case, where the injury has arisen from the intrinsic danger of the employment or work to be done, according to the present law, there is no remedy for the servant. Where the injury arises from some defect in plant or machinery, the formula of law is this, that the master is not liable unless the defect was known to the master himself, and was not known to the servant. Unless that formula can be fulfilled, the master is not liable. In the third case, where the injury arises from want of skill, or from negligence of another workman, the master, according to the present law, is not liable at all. Where the injury arises from the negligence of the workman himself, it is more obvious that the master is not liable at all. Under all those heads, therefore, the only way in which a master can be made liable, is where there is some defect in the plant or machinery which is known to the master himself personally, and which is not known to the servant.

Chairman—continued.

1916. This law did not come into existence simultaneously, did it?—The adaptation of law to the different sets of circumstances did not.

1917. It has been gradually developed?—Yes.

1918. With regard first to the liability of a master for his servant, what do you understand to be the law in that case?—How the law arose you would wish to ask me, if I understand you?

1919. Yes. And, also, we have been told by one witness that it was fancied that it was a sort of law of nature that it must be so, and that it does not appear to be justifiable unless it is, as far as I understand; will you have the kindness to give us your views on that?—As to the suggestion to which I think you allude, namely, that by Lord Justice Bramwell, that it is not a law of nature, I cannot but say that I accede entirely to that proposition. The primary law in this country, with regard to the liability of a master for the acts of his servants, is a law which is general as to all persons, namely, as to strangers. There is then a particular law which has been applied with regard to the liability of the master to his own servants. Now, a question was asked of Lord Justice Bramwell, I think by yourself, as to what was the origin of the law of the liability of the master for the acts of his servants, and whether it did not arise in the time of Lord Holt. Some other questions were asked of Lord Justice Bramwell, as to which, before I answer that, I should wish, if I might, to make some observations. One was this: it was asked whether

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whether the judges made law, and whether, if they did, that was an advisable state of things. Now I think the answer is, that the judges have no right to make law, and that, in general, they do not suppose that they are making law. The rule, as I apprehend, is this: Judges have no right to invent a new principle; they have no right to alter anything which has been decided as a matter of law, by a co-ordinate or a superior court, before their time; they have no right, obviously, to decide contrary to any statute. But what the judges may do, and must do, and what they endeavour to do, is to apply an admitted principle, that which is an admitted principle, of law, to the new combinations of fact which arise from day to day; and it would be impossible that they could otherwise administer the law, for anybody who has been conversant with the law knows that new combinations of fact, which have never been brought before courts before, are brought before them almost from day to day. Another question was asked as a preliminary, as to which I should like also to make an observation, which was, when are contracts to be implied. Now, I apprehend that the rule is this, that no contract can be implied by law, or that no condition can be implied by law, unless it be such that, in the judgment of all reasonable men, it must have been in contemplation of both parties at the time the contract was made; as, for instance, where it is said that there is an implied contract of seaworthiness in a policy of insurance, it is because that warranty amounts to this, that the ship is in a condition to withstand all the ordinary perils of a voyage at the time she starts, and inasmuch as a policy of insurance is an indemnity against extraordinary perils, it must, in the mind of every man of sense, be assumed that both parties at the time they made such a contract must have agreed that the ship should be, when she started, fit to stand the ordinary perils of a voyage. Then the reason why customs of the country are incorporated into leases is, that it has been supposed that where there is a custom of the country, which implies that it is known to everybody who carries on his business in that country, both the parties must have made their contract, although they did not express it, having the intention that it should be carried out according to the custom of the country, which it is assumed that they both knew personally. I shall in some observations which I shall have to make to the Committee have to apply that rule, but I say now that the law is that you cannot properly imply any condition or stipulation into a contract, except one which, in the minds of all reasonable men, must have been in the contemplation and intention of both parties to the contract at the time it was made. There is one more suggestion which, if you will allow me, I will make, and it is this: It was said that, under certain circumstances, you would throw this whole question into danger, because of the variable decisions of juries. Now, I have long had an opinion upon that subject which is not shared by all judges, but which I shall venture to suggest to the Committee, which is this: Do not be frightened that the decisions of juries will be frequently wrong. As far as my experience goes, they are generally right. My impression of juries is that they are singularly honest, that they are wonderfully careful, and

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that, on the whole, they are intelligent; and they have such a knowledge of many facts which are not and cannot be known to the judges, that, in my opinion, a trial with a jury and a judge, for the purpose of arriving at a just conclusion, is a far better tribunal than a trial by judge alone. I venture to say that a trial by jury alone would be a most dangerous implement, but a trial by a judge alone is open to almost all the objections that are made to a trial by a jury alone, and to some more. Judges, I think, would be quite as much inclined to come to different and inconsistent conclusions as juries; but where you have the judge and the jury together, the judge is enabled to point out to them what the real question is; he is enabled to exercise a very considerable influence over the jury as to the facts, from his greater experience, and from his greater culture; but whenever the judge is going wrong, the jury are there, and almost invariably put him right. Now, it is said that the juries have gone wrong very much in their decisions upon railway accident cases. In my opinion, and according to my experience, they have hardly ever gone wrong as to the question of liability; and I do not think it is correct to state that the juries never will find for the company on the question of liability. I have known them often do so; but the real truth is, that in the great majority of instances the company is wrong; therefore, it naturally follows that the jury find against them on the question of negligence. The jury are inclined, perhaps, to go wrong upon the amount of damages. There there is a sympathy for a person who has suffered which is liable to mislead them; and of course in the like manner in these cases of injury to a servant, they may go wrong, or be inclined to go wrong, in the same direction; the remedy I will suggest by-and-by, but will for the present postpone. But I would venture, in the first place, to say that, if that be correct, the proper cure is to amend the juries, and make them, so far as the common juries are concerned, more of a mixed kind; let some who now are on a special jury belong to the common jury too; where you have a special jury you might have them all of a particular class; and if you have a good jury, I believe they are the best tribunal that you could find. Now, you asked me how the law arose, the law as to the liability of a master, generally, for the negligence of his servant. I think you suggested that it arose in the time of Lord Holt. As far as legal tradition goes, it is supposed to have arisen in the case of Michael against Allestree, reported in the 2nd volume of "Levinz's Reports," and in the time of Charles the Second. It was a case in which the defendant and his servant had an action brought against them both, for an injury that happened to a person in Lincoln's Inn Fields, where horses were being trained, or exercised, in a break; and, according to the report, the master was absent, and yet the action was brought against him as well as his servant; and the jury found against them both, and the judgment was upheld. Obviously, therefore, that judgment could not have been upheld against the master, except upon the theory and decision that the master was answerable for the negligence of his servant. There is no great argument about it, but that I believe

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believe is, by tradition, the first case. But naturally the first case is never the principal case. The principle upon which a master is liable generally for the act of his servant is declared in many judgments, and judgments of great care, but I believe the principal one is a case called Hutchinson *v.* The York, Newcastle, and Berwick Railway Company. It is found in the fifth volume of what are called "The Exchequer Reports." That case raised the question both as to the liability of a master generally for the negligence of his servant, and also with regard to his liability in respect of injury to fellow servants; but this being a most careful judgment, I will venture to read to you what in it is said to be the ground of the general liability of a master for the negligence of his servants. It is a written judgment, and this is the way in which Baron Alderson states the opinion of the whole Court. (This is in 1850 at page 349.) He says: "This case appears to us to be undistinguishable in principle from that of Priestley *v.* Fowler (which is one that you will have heard of often, and I will presently make a remark upon). In that case the plaintiff was the servant of the defendant, and had sustained an injury by the defendant having over-loaded a van in which he, the plaintiff, was travelling by direction of defendant in the discharge of his ordinary duties. That case was fully considered, and the Court, after a verdict for the plaintiffs, arrested the judgment, on the ground that a master is not in general liable to one servant for damage resulting from the negligence of another; and some of the inconveniences, not to say absurdities, which would result from a contrary doctrine, were there pointed out." You are probably aware that those inconveniencies and absurdities were pointed out in Priestley and Fowler by Lord Abinger. Lord Abinger, who had been one of the greatest advocates ever known at the bar, had an advocate's talent, which mainly consists in the invention of analogies, and there never was a more perfect master of that art than Lord Abinger, and he took it with him to the bench; and I think it may be suggested that the law, as to the non-liability of masters with regard to fellow-servants, arose principally from the ingenuity of Lord Abinger in suggesting analogies in the case of Priestley and Fowler.

1920. He suggested a great many analogies not of master and servant, did he not?—He may have done so; but now I will read what is the principle upon which a master is liable for the negligence of his servants. "The principle upon which a master is in general liable to answer for accidents resulting from the negligence or unskilfulness of his servant is, that the act of his servant is in truth his own act. If the master is himself driving his carriage, and from want of skill causes injury to a passer-by, he is of course responsible for that want of skill. If, instead of driving the carriage with his own hands, he employs his servant to drive it, the servant is but an instrument set in motion by the master. It was the master's will that the servant should drive, and whatever the servant does in order to give effect to his master's will may be treated by others as the act of the master. '*Qui facit per alium, facit per se.*'" That is a most deliberate statement of the ground of the principal doctrine of the liability of a master. I think you will find a learned note in Holt's "Nisi Prius

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Reports," published in 1816, a note to a case of Weyland and Elkins, which gives an account of how that law arose. It began, as I have told you, in that case reported in Levinz. Many many cases followed afterwards, and this is the last, in 1850; it is laid down in this case, which is always considered the leading case on the subject. Now, if I might venture to remark upon that judgment and upon the doctrine in it which has been enunciated by so many judges, I would say that I agree, as a matter of opinion, with Lord Justice Bramwell. I do not myself think that that principle of law is altogether a just one, or is founded upon any really good reason. That doctrine of "*Qui facit per alium, facit per se*" certainly applies where the servant does what his master has ordered him to do. If, therefore, the master has ordered his servant to drive untrained horses in a crowded street, then "*Qui facit per alium, facit per se;*" it is the same as if he did it himself. If a master saw that his coachman was drunk, and sent him out to drive his carriage, I should say, "Well, you are liable for that, because he is doing the very thing under the circumstances which you told him to do." But the case supposed always, and in which the master is made liable, is where the servant is doing, not what his master wished him to do, but exactly what his master would tell him not to do if he had any opportunity; and, to my mind, the maxim does not properly apply. But that is somewhat presumptuous of me; and as far as I know, it is almost impracticable to get back from such a law as that, which is the general law of the country. Moreover, I apprehend that it is beyond the inquiry before this Committee, because that is the liability of the master with regard to everybody, and not with regard to his servant.

1921. The way that it bears on the inquiry of this Committee, I think, is that we want to understand the rule that has been engrafted upon it?—Yes, exactly so, and that is the reason why I have stated it.

1922. We want to know whether that was the law, without exception, and whether the exception has been since introduced, or whether the exception has always existed?—That was the general law, as you observe, very long, indeed before the case of Priestly and Fowler, an undoubted law, and one which has never been questioned. Now as to this liability as between fellow servants of the master for the negligence of a servant, the first case, or any real case that we know of in the books, I believe, is the case of Priestley and Fowler, and that is in 1837. I do not know whether the reference has been given you, but it is in the third volume of "Meeson and Welsby's Reports." You probably are acquainted with the circumstances; it is one of those unsatisfactory cases in which, under the old system, the question did not arise upon what were the real facts, but upon how they were stated on the Record; which meant, that although the proof at the trial might even have gone somewhat beyond the declaration, the question was whether the declaration itself was good when you came to look at it.

1923. It was a little doubtful whether the negligence consisted in the badness of the van or the overloading it?—The case might be upheld on the ground of the van being insufficient; but you will see in the case of Hutchinson and the

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York, Newcastle, and Berwick Railway Company it is treated as a case of the non-liability of the master, because the negligence in overloading the van was the negligence of a fellow servant. Now, in this case again of Hutchinson *v.* The York, Newcastle, and Berwick Railway Company, we come to the enunciation of the rule and the reasons for it, and the principle on which it is founded, of the non-liability of a master with regard to an injury to one servant by the negligence of another; and it is put thus: "The difficulty is as to the principle applicable to the case of several servants employed by the same master and injury resulting to one of them from the negligence of another. In such a case, however, we are of opinion that the master is not in general responsible when he has selected persons of competent care and skill." I think you must notice there those words, "when he has selected persons of competent care and skill." Then it gives the reason of the rule as to the two servants. "They have both engaged in a common service, the duties of which impose a certain risk on each of them; and in case of negligence on the part of the other, the party injured knows that the negligence is that of his fellow servant and not of his master." Well, of course, that is true; after the result he knows that he was hurt by the negligence of his fellow servant. I do not see that that helps. Now this is the reason of the rule: "He knew when he engaged in the service that he was exposed to the risk of injury, not only from his own want of skill or care, but also from the want of it on the part of his fellow servant; and he must be supposed to have contracted on the terms that, as between himself and his master, he would run this risk." That is an implied contract. Again it says, "This was a risk which Hutchinson must be taken to have agreed to run when he entered into the defendant's service." And again it says this: "The principle is that a servant, when he engages to serve a master, undertakes, as between him and his master, to run all the ordinary risks of the service, and this includes the risk of negligence on the part of a fellow servant whenever he is acting in discharge of his duty as servant of him who is the common master of both." Now there is a most careful and authoritative declaration of the principle upon which this exception rests.

1924. Ought not the judgment to have gone one step further and to have said that he contracted that he should not be compensated for any injury he received?—I was for the moment telling you what the law is. I will presently tell you what my opinion, which is a long founded one, is upon the law; but for the present I wish to fix the principle.

1925. I mean as a matter of logic, to support that decision the ground appears insufficient unless you go to the length of saying that he contracted also that he would not claim any compensation for injury received?—According to our views the question first is as to the liability; and if he undertook to run the risk it follows from that that his master would not be liable.

1926. A soldier undertakes the risk in battle, but it is also understood that there is a certain compensation to which he is entitled?—I should have said myself that the judgment assumes that. Now in the case of the Bartonshill Coal Company and Reid, which was in the House of Lords

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and came from Scotland, Lord Cranworth, who was then Lord Chancellor, thus stated what the law of England is: "When several workmen engage to serve a master in a common work they know, or ought to know, the risks to which they are exposing themselves, including the risks of carelessness against which their employer cannot secure them" (I may say that upon the facts that was the negligence of a fellow servant), "and they must be supposed to contract with reference to such risks." I have, therefore, I think shown that the principle upon which this rule is founded is the principle of an implied contract. It is either that or it is upon the assumption that the servant knew, or ought to know, the risks at the time that he accepted the employment. Now, with regard to its being an implied contract, my objection to that is founded upon what I said before; it does not seem to me to come within the rule that all persons of ordinary intelligence must assume that both the master and the servant had that matter in their minds at the time they made the original contract of service. It seems to me that the rule is founded upon an erroneous assumption of fact. My view is this, that it is impossible to say truly that when a workman makes his contract of service with his master, that servant has in his mind the recollection, or the memory, that he may be injured by the negligence of a fellow servant. It is not true, in fact, and it cannot be said that it is, and that, therefore, is not any ground upon which you ought to imply a supposed agreement on his part. If it is to be put on the ground that he knew at the time, of course that means that he knew, in fact, that means that he remembered, in fact; and, therefore, that brings you to the same point as the other. If it is put on the ground that he ought to know, that, of course, everybody must judge for himself; but I cannot conceive that a servant, or a workman going into employ, ought to know that he has to run the risk of the negligence of a fellow servant in the same employ, of whom he knows nothing, and never will, probably, know anything until the accident happens. I have, therefore, always thought that this exception of a master's liability for the act of his servant, in respect of the injury done by that servant to another servant, is founded upon a wrong application of the principle of implied contract. I may say that this is not new, and that almost the whole of the view that I am now taking I ventured as counsel, although not in a case exactly in point, to argue before the Court of Appeal in 1861, in the case of Potter and Faulkner, which is in the 1st Best and Smith. I argued the whole of that before the Court of Error, but naturally and properly was overruled, because at that time the law was fixed. With regard, therefore, to this non-liability of a master in respect of injuries which are caused by one servant to another, my opinion is, that as long as the general law lasts that a master should be liable to everybody for the act of negligence of his servant, on the principle "*Qui facit per alium, facit per se*," there is no just or logical reason why he should not be liable to a fellow servant of that servant for whose negligence he is liable. Whether it is expedient to alter the law is a matter which I do not think that I ought to give any opinion on. I only say that

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that I think that it is not in theory just, and that it is not a proper logical conclusion; and, if I may venture and dare to say so, I think it was a wrong application of the principle at the time when it was first brought into our law. Now with regard to the danger of saying that a master is to be liable to all his servants for the negligence of one, of course if you bring back the case of the master with reference to fellow servants to the general law, it will be subject to all the conditions of the general law, and, therefore, although a fellow servant may be negligent, for whose negligence the master is responsible, the master would not be responsible if the servant injured was also a party to the negligence. There would be that protection to the master; and, therefore, supposing that the servant who is injured had notice that the other was doing a negligent thing, so that, by any reasonable care of his own, he could have avoided the consequences, it may be, for instance, that he knew that his fellow servant was habitually negligent in the performance of his work, I should say that that would be strong evidence upon which to go to the jury, and upon which they ought to find that the servant injured had been negligent himself, contributing to the accident; and that therefore the master would have the same protection with regard to that servant as he has with regard to all the other members of the public; and in my mind I do not see justice or reason why he should have more, as long as the original law lasts; that is all I say. Then a point has been put with regard to the enormous damages which might be inflicted upon a master by the negligence of one of his servants. It is obvious that that has reason. It would be very curious indeed in any discussion if there were not some reasons which were good on both sides. The question must depend on which has the balance. But in the case which was put to Lord Justice Bramwell, of gas suddenly breaking out in a mine, that of itself would give no cause of action to anybody; it is only in case that was the result of negligence; and if therefore it was a thing which happened on the sudden, and which ordinary care and skill could not have prevented, nobody is liable at all. Now, an observation has been made that you throw all this burden upon the master, and do not throw it upon the delinquent servant. All one can say to that is, that that is not true as a proposition of law. It is the result of the logic of facts, as it is called. You have in law a remedy against the delinquent servant; it is obvious that you have not practically, but that is because he is a poor man and cannot meet his liability. There is another point in the matter of law which perhaps it would be well worthy of the Committee to consider, which is this, that if the master is made liable for the delinquency of a servant who is able to pay, although the master is liable, I apprehend that the servant would be liable over to the master if it was the fault of the servant and not of the master; but that, again, naturally is in almost all cases a useless remedy which the law gives, because it cannot be put in practice. Then there is another matter with regard to the immense responsibility put upon masters; if it is an argument at all, it is an argument in many other cases besides an accident happening to servants; as, for instance, where a committee were

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made liable for the falling of a stand at York races; they were made liable to an immense liability to a great number of persons, but that is their misfortune; that is all you can say. You must choose between the persons who are injured and the person who is liable for the injury. He may be ruined; it is a thing that cannot be helped. He is ruined if the accident happens to strangers; I see no logical reason why he should not be liable even to ruin when it happens to his servants. For the present I do not recollect that I have any more to say upon that head of the liability in respect of servants.

1927. You put a case to us very clearly at the beginning of what you have said, in which you pointed out one case in which it is quite just that the master should be liable, namely, if he has sent his drunken servant to drive; and you put other cases where you think he is liable by law, but where you do not see the justice of it. Would it be possible to put into words that distinction, or would you suggest that as being a proper change of the law which you would recommend?—It follows if you by law do away with the exception.

1928. You put a very plain case where a man sends a drunken or an unskilled man to drive horses in a crowded place; you say that he does that act himself, and ought to be liable; but if he sends a skilful man and proper horses into the streets, and an accident happens, he is still held liable, though he has done everything he can to prevent that accident; are there any means by which you could define those two cases?—I think if you enacted that a person should only be liable for the results of his own personal negligence, it would follow from that; because in the case I put it is negligence on the part of the master, and although the injury is not the result of what is called the *causa proxima*, yet the injury is the result of that which the master does, and very direct too, only through a sequence; that is, the master is negligent in ordering the thing to be done; the servant in the case supposed in some cases might not be negligent in doing the thing.

1929. Am I right in supposing that you would consider it an improvement in the general law if that were adopted?—It certainly results from what I have said, that I should not have so decided at the beginning; but I must make this observation, that that law is a general law as to the whole country, and it has been so long the law that I should think there would be very great difficulty in altering that part of the law; whereas this law as to masters and servants is to my mind comparatively modern.

1930. Still do we not expose ourselves to considerable difficulty if, under circumstances very similar, we have two different rules of law?—But I do not think you would. What I suggest as my view of the law of master and servant is to make it exactly the same as the law with regard to strangers. The difference now is between the law of the liability of a master with regard to strangers, and the law with regard to his liability to a servant who is injured by the negligence of another servant of the master.

1931. At the same time I understood you to speak with some disapprobation of the law as regards strangers; are you prepared to advise us to reform the law in this matter to a law which you do not yourself thoroughly approve

of?—

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of?—It is open to that remark; and I tried to guard myself against it in the beginning by saying that I thought, looking at the ground upon which the exemption of the master from liability with regard to injury to a servant rests, that it is a wrong exception to the other law, and ought not to be made as long as the other law lasts. I have put my opinion in this shape, that I think the law with regard to the non-liability of the master to his servant is a bad exception to a bad law.

Mr. *Gibson.*

1932. In reference to what the Right Honourable Chairman has just asked, you stated that you would not have decided the original law as it has been decided; can you state to the Committee exactly how you would have decided it, because that might bring out a point which you were asked?—As long as a master took proper pains to provide himself with a careful and skilful servant, I would not have had him made liable for any negligence on the part of that servant. If he himself was guilty of negligence in hiring a servant without due care as to inquiring into either his skill, or his competence, or his general character for carefulness, I should have thought that it was personal negligence, as I ventured to say on the part of the master, and that it would be so near to the resulting injury that as it would be in the direct course of causation the master should be liable, though he himself was not present when the injury happened.

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1933. Will you have the kindness to go on with your remarks?—The other head is one of the heads of which I spoke, where the injury arises from some defect in the plant, or machinery, and where the formula of the law is that the master is not liable unless the defect was known to him personally, and was not known to the servant. Now that, of course, implies this: that where there is a defect in the plant or machinery, which is the real cause of the accident, if that defect be known to persons in the employment of the master to whom he has entrusted the care of that very plant or machinery, and it is owing to the negligence of those persons whom he has so trusted, that another servant is hurt, the master is not liable under the present law, because it is said that he, the master, did not know of the defect; in other words, if there be a master who does not attend to his own business, who stays away habitually from his own business, and who leaves the care of his machinery and plant to a servant, if that servant neglects the duty, and thereby other servants are injured, they have no remedy against the master. It comes within the former rule, practically. I would never make the master liable (this is my opinion, which I am now going to give) for a secret defect which no reasonable care on the part of anyone could detect or obviate. I never would make him an insurer of his machinery, but I would strike out of the formula (if I make myself intelligible) the phrase "known to the master." I would leave in, of course, in the formula the phrase "not known to the servant"; for if the servant knows of the danger, I do not think he ought to be able to recover; he then has really undertaken to run the risk. But I would either leave in or introduce into the formula the word "negligently"; I would say that the master must be liable if there be a defect in the plant or machinery which is existing by the negligence of some one for whose negligence the employer would be responsible to strangers. That is the same result as would arise by saying that I would not hold the master liable for any injury caused by a secret defect which no reasonable care on the part of any one could detect or obviate. Neither would I hold him liable if the defect was a secret one which was the result of the negligence of a person from whom he had bought his machinery, from an independent tradesman. He is not liable now for any such defect to strangers, and I would not make him liable to his servants. But if the defect in the machinery is one caused by or remaining in consequence of the negligence of servants to whom the master has entrusted the care of it, and for whose negligence therefore he would be liable to everybody else, it follows from what I have said on the other point that I would make the master liable for any injury of any servant of his injured thereby, and who did not know of the defect, and was not himself guilty of any negligence. Therefore, in other words, it comes to this, that on both those heads I would leave the law with regard to master and servant, as to the liability of the master as regards his servant, the same as the law of his liability to everybody else in the community, no more and no less.

1934. You would abolish that distinction, in fact?—I would abolish the distinction; I do not think I can say anything further by which I can hope to assist the Committee.

1935. Supposing such a law as that suggested were made, would you allow the parties to vary it by contract; would you allow the master to require from his servant that he should contract not to enforce that liability?—In my opinion the condition of the master and the servant is not equal, and I would never allow a master to contract himself with regard to his servant out of his liability for negligence.

1936. Is there any precedent now for that; there is the case of seamen, is there not; they are protected?—There are limits of the power of the master and seamen to contract.

1937. A seaman cannot contract himself out of certain advantages?—He cannot contract himself out of certain advantages.

1938. But that it on the ground that seamen are a particularly reckless and improvident race, is it not?—Yes.

1939. But we could not apply that to the workmen, could we?—I do not put it on that ground, but on the ground that the position of the master and servant is not equal at the time of the employment.

1940. Do you think that that is a ground which could be maintained; that people who are of full age and able to maintain themselves, and are fathers of families, are not able to contract?—You have I think a law of the same kind with regard to workmen; the Truck Acts are very like it. You will allow me, perhaps, to make one or two observations. I said, in answer to your last question, that I would not allow the master to contract himself out of his liability with his servants. I would allow masters to insure against the

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the results of liability for the negligence of their servants where it was not their own negligence as well; but I would not allow them to insure against the consequences of their own personal negligence.

1941. As a matter of public policy?—As a matter of public policy.

Mr. *Knowles.*

1942. Do you think that it would be just to ask the workmen themselves to contribute partly to that insurance that you speak of?—No, I do not; because I think that is another way of allowing the servant to contract the master out of his liability.

1943. But do you think that the workman is not now as much at liberty to contract for himself as the master is; do you suppose that workmen are not quite as independent of the master as the master of the workmen?—In a great many respects they are. And with regard to some problem of political economy which was suggested to Lord Justice Bramwell, I may say that I should think that at the present day it required very considerable limitations as to its real applicability in practice; but in the question whether an individual servant will enter into employment or not, I cannot think that he is in a position to say "I will not enter into employment."

1944. I understood you to say that the majority of workmen when they engaged had no notion as to whether their occupation was dangerous or not?—Not so; I did not mean to say so; I said that it was not present to their minds whether they were to be really responsible for the negligence of their fellow servants. If a servant enters into an employment which is obviously a dangerous employment; that is to say, if he enters into the manufacture of powder, in a powder magazine, I should not say that the master ought to be liable for anything which was an ordinary accident in such a dangerous employment.

1945. Will not the same apply to a man engaging to go on board ship; could he avoid having knowledge that it was dangerous?—You mean the ordinary dangers of the voyage, or say the perils of the voyage. He must have that knowledge. I should not think that he could claim from his employer compensation for anything which is the ordinary result of the nature of the employment itself. Therefore if it is a dangerous employment of itself, and obviously so, a workman, if he chooses to go into it, must run the risk of those dangers; but those are dangers which would arise in such an employment without the negligence of anybody.

Mr. *Attorney General.*

1946. As to insurance, if the law were that a master should be liable to a servant for an injury inflicted in consequence of the negligence of a fellow servant, the master might insure, might he not?—Yes.

1947. He cannot insure now, because there is no liability?—That is so. It would follow that he might insure; and therefore what I suggest would be a limitation on his power of insurance, because I said that for reasons of public policy I would not allow him, and I think it is contrary to public morality, that a man should be allowed to insure against his own personal negligence. That is the view I take of it.

Mr. *Attorney General*—continued.

1948. Now, as I understand you, with regard to the rule that a master is liable to third persons, to strangers, for injuries occasioned by the acts of his servants when in his employment, or in the course of their employment, although you think that rule has been so long established that it would be with difficulty altered, you do not think that rule is a good rule, a just rule?—I do not, subject to the limitations I have mentioned.

1949. Supposing we could wipe the slate clean and begin again, would you confine the liability of the master to anybody, a third person say, to cases where the action of the servant which caused the accident was expressly authorised by the master, or was the legitimate result of the agency or employment?—I think that question assumes this state of things; if you attempt to make a master liable on the ground that he has ordered his servant to do a thing, and the servant has done it in the way in which it was ordered, you do not bring in the doctrine of negligence at all; you make the master liable because he has directed the servant to do a thing which the servant has done; but when you bring in the doctrine of negligence and make the master liable for the negligence of his servant, he himself not having been guilty of negligence, you are really assuming that the servant is doing the thing which he has been ordered to do in the way in which the master ordered him not to do it, or would order him not to do it if he had the opportunity.

1950. In fact, that is a case where he has not done an act by the hand of another?—That was my objection to the original principle. My objection, if I might say so submissively, was that the original judges in making the master liable for the negligence of his servants misapplied to the case the principle "*Qui facit per alium, facit per se.*" They had the principle, but I think they misapplied it.

1951. If you altered the original rule, and made a master only liable for his own negligence, or for his own act, or any act which he had authorised the servant to do, then you might abolish the exception; in fact, there would be no occasion for the exception?—There would be no occasion for the exception.

1952. The exception would go with the rule?—The exception would go with the rule, of course.

1953. As I understand the law now with respect to injuries to servants, a servant cannot sue the master for any accident which has happened in consequence of the nature of the service into which he has entered; I do not know whether your attention has been called to a case of Woodhead against the Gartness Mineral Company, which was a Scotch case decided on the 10th of February in this year in the Court of Session?—No, it has not.

1954. I did not assume that it had, but I have got a report of that, and it seems the case decides this; I do not know whether you would agree with it or whether I ought to ask you the question, but it decides this, that where a workman in a mine was injured in consequence of the negligent act of a servant of some contractors who were doing some work in the mine, in that case the mineowners were not liable; and this

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is the head-note upon this point: "In an action for reparation at the instance of W.'s representatives against the mineowners, held (in conformity with the opinion of a majority of seven judges) that as both W. and the underground manager were members of an organisation of labour for one common end, and subject to one general control, they must be considered to be fellow-servants, and that consequently W.'s representatives had no claim against the mineowners;" I presume that would be on the ground that W., entering into such an employment as that, undertook all the risks, and, amongst other risks, there would be the risk of the negligence not only of fellow servants, strictly speaking, but of anybody who might be employed there?—That is upon another confine of the doctrine, I think. The doctrine is that a master is liable for the act of his servant, not of his agent; that is the doctrine of the law of England, and there, of course, have arisen disputes upon that border line as to whether a person is the servant of another or not; and that has always raised the question as to whether he is the servant of the person contracting with you to do the work, or whether he is your servant; and I daresay the Committee recollect some striking illustrations put by Lord Justice Bramwell as to the difference between a person being the servant of one contractor or another, and a suggestion of his that by joining in partnership without the servants knowing it, the two masters might make themselves not liable at all. But really that, if you will only consider it, goes to the point of whether the person who has been negligent is the servant of the master or not; that is the point there, and therefore that question is whether it is brought within the law that you have been discussing of master and servant at all or not.

1955. Do I rightly understand your view to be that, so far as you wish to have any alteration of the law, you are inclined to think that the exception that one servant shall not recover for an injury occasioned by the negligent act of a fellow servant should be done away with?—Yes.

1956. And that the general law should apply to servants just as to strangers?—Yes.

1957. But supposing it is found impracticable to alter the law in that direction, in your opinion would you make the master liable for the acts of managers, persons who are, so to speak, in the position of masters?—I think I can only answer that in this way; if I think the whole ought to be done, then of course I think that if the whole cannot be done a part should be done if it can.

1958. If it were done, and masters were made liable, not only for their own acts but for the negligent acts of their managers and people in the position of managers, it would not be necessary, would it, to alter the law with respect to machinery; in such a case as you have put the master would be liable for a defect in the machinery which a manager might have found out if he used reasonable diligence?—Yes, certainly that follows.

1959. Did I rightly understand you to limit your proposals to the cases of defective plant or machinery, or do you go the whole length of proposing that the master should be liable for any negligence of a servant?—On the other head I said I went the whole length.

1960. Let me put the case of the seamen and

Mr. *Attorney General*—continued.

shipping; would you make the shipowner responsible to his men for the negligent look-out of one of the seamen, by which the vessel was lost?—Yes, I see no escape from that; it follows. He is liable now, I apprehend, in such case to all the passengers and crew of another ship who might be injured by reason of such want of a proper look-out.

1961. You would go the full extent, then?—Yes; I have said that I confine my opinion to what I conceive to be (assuming the main law to stand) just and logical; whether it is expedient on the ground of public policy, I said I gave no opinion, and I should not desire to, because I do not think it is within my competence.

1962. You are aware, I suppose, that the Merchant Shipping Act has made the master responsible to the seaman for any defect in the vessel amounting to unseaworthiness?—Yes.

1963. And that that is an indefeasible contract now between the master and the seaman?—Yes; but that law goes further than I said, because it makes the master liable to the seaman though he himself was not cognisant of the fact, and had no means of knowing that the ship was unseaworthy.

1964. You would leave intact the question of contributory negligence?—Yes.

1965. And also the question whether the servant knew of the defective state of the plant or machinery?—Yes.

1966. But you would make no limit to the other case of negligence, namely, the ordinary negligence of the servant, not in respect to the plant, but in the conduct of his employment?—No, for the reasons I have given.

1967. Are you aware that the Scotch law till a few years ago was far more favourable to the workman than the English law?—I do not know much of the Scotch law. It has been supposed amongst English lawyers to have been asserted in that case in the House of Lords to which I have referred, that the law in Scotland was somewhat different from the English law. I did not understand that their Lordships in that case really said so, but it has been supposed so.

Mr. *Hopwood.*

1968. Would you allow me to ask you, admitting your principle to be adopted, and that we return to what you think the veritable principle should be, would it not be expedient or possible to engraft some exception a little lower down on the masters' liability, namely, to attempt some definition of common employment, so that the master should not be liable for the negligence of the workmen *inter se* in a common employment?—The question of common employment is like that which was suggested just now as to whether a person is the servant of a contractor or not; all those discussions about whether the servants were in common employment were discussions to determine whether the persons were fellow servants or not. The great discussion as to whether the persons had been acting in common employment was to determine the question whether the two people were fellow-servants or not; and if my suggestion were carried out, and the liability of the master were made the same with regard to his servants as with regard to all other people, I think that question falls.

1969. I was rather perhaps in my mind thinking

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ing of the risks of the employment; take two men working in a mine using pickaxes, or take the case of paviours in a road, and one injures another by his negligent act, and that is plainly incident to the ordinary risk of the employment *inter se;* is it possible, in your mind, to engraft on the principle an exception defining such cases and limiting the liability of the master?—You see, if it is the ordinary incident of the employment, that assumes, I think, that it is done without negligence; because negligence means that the thing, in its ordinary course, might be done without injury, but in consequence of its not being done in its ordinary course, but being negligently done, and out of the ordinary course, the injury results.

1970. I would say instead of an ordinary incident, "a likely incident," that men will be negligent when working together?—It follows from what I have before said, that I should not make any limitation as regards that which does not exist as to strangers.

1971. Have you thought whether the law might be so framed as to leave it as a matter of fact more to the jury; whether it is right or wrong that the man injured should be compensated?—I think you know that there has been a considerable difference among the judges as to how much of that question ought to be decided by the judge, and how much by the jury; and I think you must know that I am one of those who think that the very largest possible power should remain with the jury.

1972. But that is not so quite, in practice?—No, but there are decisions now, and a late decision in the House of Lords, which would seem to bring it to what has been my view of the functions of the judge and the jury, that if there is any evidence at all upon which any reasonable man could find, the question must go to the jury, and not to the judge.

1973. Take the question of whether a man is in fact a fellow servant, has not that been treated sometimes as a matter of law?—It has been sometimes, probably, and to a certain extent, I suppose, it must be; but if there is any evidence at all upon which the jury might find, I think it ought to be left to the jury as much as any other question of fact, or as much as any question of what is the result of the ordinary facts in daily life.

1974. Take the apparent absurdity of saying that a man working in a mine is a fellow servant with a man who is manager at 800*l.* a year; I mean to ask whether that should be a question of fact for the jury rather than for the judge?—You mean, assuming the present exemption to continue? because it falls with my view.

1975. Quite so; I was only looking to see if there was any limitation of the apparent absurdity?—I do not think you could do that by leaving it to the jury; I think it must be done by definition.

Mr. *Ripley.*

1976. Am I correct in supposing that there is an anomaly at present in the state of the law, at any rate what has been made law by the decisions, with regard to the liability of a master for the injury which any third person sustains by any act of his servant; and that, therefore, you think that that law should be extended so as to make him liable for any accident which may happen to any fellow servant?—I think there is an anomaly in making a distinction between the liability of a master to a stranger for the act of a servant, and his liability to another servant; and I think that anomaly has been caused, in my opinion, by the exception being founded upon an illogical process.

Mr. *Ripley*—continued.

1977. Personally, I think I gathered that you considered it would be better that the master should not be so liable?—Will you forgive me for stating that I must say again, if you altered the whole law with regard to everybody, then I should say that nobody ought to be liable for anything but his own negligence or want of care or skill, but as long as you maintain the general law, I think that general law ought to be applicable in regard to the liability of a master for injuries to a servant.

1978. If that general law should be considered to be unfair, would it not be extending and increasing that unfairness to make the master liable for the acts of his servant to a fellow workman in the way that he is now liable to a stranger?—I think "unfair" is a strong term. I should not have so decided myself, but it is a much more difficult question whether the doctrine "*qui facit per alium, facit per se,*" should not be applicable. I hardly know that it is unfair; but what strikes me is that, assuming as your question implies, that the original law is unfair, then if it is unfair, it seems to me more unfair to make an exception than it is to leave the workman in the same position as all other people.

1979. The question arises whether it would not be better and more just to try to remedy that unfairness, whatever the difficulty may be, rather than to increase it?—That is the question before the Committee. I can only give you my view of it.

Mr. *Gibson.*

1980. As I understand you, you give your opinion clearly to the Committee that you think it would be both just and expedient to remove the necessity of having the element of knowledge in a master, where the servant at present is not entitled to get damages in the case of an injury which results from machinery, unless the master had knowledge; you would take away the element of the necessity of knowledge where the knowledge is now required; you give that as a clear opinion?—Yes.

1981. But as I understand your evidence, you do not give any opinion as to the justice or expediency of taking away the exception about common employment. All that you say on that is that you think it illogical to graft such an exception upon the law?—I think in neither case did I say that I gave an opinion upon the expediency. I rather limited myself by saying that there might be reasons of expediency and policy as to altering the law, with which I thought I should have nothing to do.

1982. As to the first point, I mean?—As to both.

1983. I thought you made a distinction?—No, I did not intend to make any distinction.

1984. Then, do you think it would be reasonable and just to make a law on the first point, taking away the necessary element of knowledge from the master?—Yes, I do; just and reason-

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able. The only difference between your proposition and mine is, that I decline to enter upon the question of expediency. Just and reasonable as to both, but I do not think it within my competence to give an opinion on the other point.

1985. The law as to making the master liable for the acts of a fellow servant in the same employment, cannot be affected without legislation?—No.

1986. Do you think it is desirable, if there is legislation, to also consider the rule as well as the exception?—That is a little going beyond my province; but I did venture to say, at the beginning, that I thought the general law had existed so long and was so universal, that you would find it very difficult to alter it. But I endeavoured to point out this, that I thought this law with regard to the exception is not nearly so old, and, of course, is not so general.

1987. Would you draw the line anywhere about common employment; there are, of course, a great many distinctions about traditions of the policy and differences of work, and I believe these are the class of cases on which the differences of opinion have arisen. But supposing a case where there can be no possibility of difference of opinion; that half a dozen men are working together all within one another's view, in the same pit, and that one of them is negligent and causes injury to his fellow servant, would you, in that case, draw a distinction from the case where the negligence would be committed by an unseen workman, and in a different part of the mine altogether?—I think the suggestion rather points to the question whether the servant injured is himself guilty of negligence; because, if he is guilty of negligence in continuing to work with fellow-workmen who he sees are negligent, or continuing to work in a place which is obviously dangerous, by the general law he would not be able to recover; although the master were liable for the negligence of the other servant primarily, yet this particular servant injured could not recover, because he would be contributing to the accident by his own negligence in staying there with knowledge.

1988. I apprehend that the point of the element of danger in the employment, is quite distinct from the point I am putting; centreing the question therefore upon the case of half a dozen men working together under one another's eyesight, do you think it would be reasonable if they are all absolutely in the same employ, and one of them is negligent and causes damage to a fellow servant, that the master, who is in no default, having gone to trouble to employ only competent workmen, should in that case be liable to the damages?—I think so, as long as the primary law exists; because that primary law assumes that a man is made liable, although he himself is personally guilty of no wrong at all; that is the assumption of the general law. Then, as to the question of the man working with others, it seems to me that a man is not bound to anticipate, and as a general rule does not anticipate, that other people will be negligent.

1989. Do you think that in the case, for instance, of six men raising a heavy weight, and one of them through his negligence contributes to dropping it, and possibly hurting a fellow-servant, that would be taken as a risk of the employment, and that the master would be exempted under that head instead of the other?—Not if the heavy weight would under ordinary circumstances, with ordinary care and skill, not have fallen.

Mr. *Gibson*—continued.

1990. Would it not enter into the element of risk in the employment, that if a certain number of men were engaged in a common act, one of them might through negligence allow the weight to fall?—No, I have just said that I do not think so. I do not think that negligence is a thing to be contemplated as the ordinary result of an employment.

1991. Do not you think it would be rather hard upon the master, in the naked case I have put, to say that he would be liable?—Yes, I do; but then it is very hard, in my opinion, that the master should be liable to a stranger. In the case you have put, supposing there were people standing by the stone, unless you could say that they were absolutely negligent in standing by the stone, the master would be liable to them for damage which they sustained. That is very hard; still he would be liable; he has not invited them to go there, and yet he is liable.

1992. I gather that you consider the proposition which I have put an extreme one, and that it would be hard on the master?—I do not think that it would be an extreme one.

1993. As I gather, you graft on that the possibility that the master would not be liable, because it might be contributory negligence in the other servants, which would be one element of exemption; or else possibly it might be taken as a risk incident to the employment?—If the case be that of lifting exceedingly heavy weights which are liable to fall, notwithstanding all the care that can be taken, that I should call a risk of the employment, if a jury should so find; but if the lifting of the weights is an act which, in the ordinary course of business, is done safely, and an accident is caused by the casual negligence of one of the people employed in it, then I cannot see that the others ought to anticipate that that one person will be negligent. It is not, by the hypothesis, one of the ordinary risks of the employment; it is a casual thing, which happens through the misconduct of one man.

1994. Is there not this difference between a third person outside and a person engaged in the absolutely common employment that I have put, that the servants engaged in that common employment have each got a direct interest, as well as a duty, in watching after one another, whereas the outside person has no right of supervision?—An interest they may have; but, with great deference, I do not think that they have any duty. What duty has one workman to look after another; to see if the other does his duty properly?

1995. That may be so if the exception is taken away; as long as the exception exists do you not think that there is a decided interest as well as a high moral duty in the servant to see that his fellow servant does his duty?—I do not see that the duty exists any more whether the exception exists or whether it does not. I cannot see that one workman has any duty to control the mode in which another servant, merely as such, is doing his duty.

1996. Do you think that the supervision now exercised would be increased or lessened by giving the servant a right of damages against his master for

Mr. *Gibson*—continued.

for negligence of a fellow servant, which at present he has not?—If you ask me as a fact, I do not think it would be either increased or diminished.

1997. It would have no effect, you think?—I think not any.

Mr. *Macdonald.*

1998. You have been asked, if it was possible to begin again; would you alter the formula that you have named of the law; do you think it is possible to begin again? — With regard to strangers, do you mean?

1999. Yes?—If you mean the general law, everything is possible; but I think it is exceedingly difficult.

2000. Is it likely?—I should say that that is better known to the Chairman and the Members of this Committee than to me.

2001. Then you rather think it is right to follow out the logical consequences of the law as regards strangers and apply that to workmen?—Yes, I do. I see no reason to the contrary, as I have said.

2002. Your Lordship mentioned a case, which I did not hear, in which you said, that in the House of Lords it had been stated that more ought to be left to the jury; what case was that?—There have been many cases lately in which the question as to whether calling out the name of the station by the porters at a railway station, and when the train afterwards stops, is to be considered as an intimation to the passengers that they may get down, or whether it is not. Some of the judges themselves decided that calling out the name was no intimation at all to the passengers; and that therefore when a passenger got out after the name was called out, and met with an accident, it was his own negligence. They decided that as a matter of law. Other judges thought that inasmuch as calling out the name of the station was a matter of daily occurrence, and must have got a meaning in ordinary daily life, it was not for them to decide whether it was an intimation to passengers that they might fairly get out or not, but that it was for a jury. There were several cases of that kind, and the decision in the House of Lords is supposed ultimately to be that where a judgment is to be passed upon facts, or the effect which certain facts may have in the ordinary and daily occurrences of life, that decision is not for the judge but for the jury, on account of their greater knowledge of every-day life.

2003. As I understand you, you clearly think that workmen do not contract for the negligence of a fellow workman when they enter upon their employment?—As a fact present in their own minds, I have the clearest conviction that they never think about it.

2004. I find in the case of Wilson *v.* Merry and Cunningham, one of the judges making use of this expression: "at the same time I am not surprised that the learned judges who tried the case should have been embarrassed by the rather unsatisfactory and somewhat conflicting state of the authorities and decisions on a branch of law which has only lately approached maturity;" could it be that risk even entered into the idea of the workmen when they contracted, when the law is only in process of reaching maturity?—I apprehend that what the learned Lord was

Mr. *Macdonald*—continued.

alluding to there was, not that the law was approaching maturity, but that the application of it to certain facts was, because, as I have said, the judges would have no right or competency to make a new law. He was, therefore, speaking of the application of the law to certain facts. But I agree with the suggestion that you put, that if the judges are puzzled as to what must be the implied contract, it is obvious to my mind that the contract ought not to be implied, because it could not be in the minds of all reasonable persons; it could not have been in the minds of the people when they made their contract.

2005. If it was in the act of maturing, the risk of to-day would not be the risk of to-morrow?—Just so.

Mr. *Tennant.*

2006. You say that you would assimilate the law of compensation, both as regards a stranger and a workman; now is that quite compatible with the other doctrine that you laid down, that the workman undertakes the ordinary risks of his work when he enters into the employment?—Yes, I think so, because, supposing a stranger sees something being done, which is obviously dangerous to do, and goes near it, or interferes with it in any way, he cannot recover. You assume in those cases that there has been negligence on the one side, that is by the servant, who is the person guilty of negligence. You assume that; then the question is, whether the person who is injured could have avoided the consequence (that is the old formula), by reasonable care. If he sees that the thing is being done negligently, or if he sees that the thing is a dangerous thing to do, and goes near it, then he is doing that which is not reasonable himself. That would be a question for the jury to decide, whether he is doing that which is reasonable; and that is equally applicable to strangers as it is to servants. For instance, supposing a stranger were to see a heavy weight being lifted, and were to see either that it was obviously a dangerous thing in itself, or that the people who were doing it were doing it negligently, and that then, out of curiosity or otherwise, he were to go and place himself under the heavy weight, naturally he could not recover.

2007. Then you see nothing incongruous between the two?—I would make them exactly alike; and, therefore, naturally I should see nothing incongruous when they were made alike.

2008. You say, that you would not allow the master to contract himself out of the Act?—No.

2009. But could not the master in all large establishments divest himself of liability by having his work done by contract; could he not practically contract himself out of the Act in that way?—Yes, of course he would do so; but then he would be carrying on his work in a way in which it has never been carried on hitherto. You are supppsing a man who contracts with somebody else to do all his works. You must recollect, I think, that Lord Justice Bramwell explained that the difference between the person who is considered in law as a servant, and the one who is considered a contractor, is this: If you were to contract with a person, that he and his servants should do all your work in the way you should direct his servants to do it, they are

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Mr. *Tennant*—continued.

your servants; that is only a different mode of paying them; but if you contract that he and his servants shall do the work in the way he thinks best, then he is a contractor. All I can answer to that question is, that no manufacturer would carry on his business on the terms that he should hand it over to somebody else to do it in the way they thought best; he becomes no longer a manufacturer.

2010. It would become a question, which is the greater disadvantage, the disadvantage of entering into a contract, in which case the work would not be carried on so economically, or whether he should undertake the liability in question?—Forgive me for saying that you are bringing me into a question of expediency, which I do not wish to pronounce upon; but you must not assume, which people are apt to do in dealing with a particular subject, that the thing is of constant occurrence, that these accidents are occurring every day in England, and in every employment. After all the number of accidents I think you will find, comparing them with the number of persons employed in labour, is not very great.

2011. Would you make it compulsory in the case of an alteration of the law, that the workman in suing the master should also include in the action the actual perpetration of the injury?—I have thought of that, and under the present system, under the Judicature Act, of course that might be done; but on the whole I would not force it, because if you force it you may be putting on the plaintiff the necessity of bringing an action against a defendant who obviously cannot pay either the damages or the costs, and therefore you would put upon the person who was injured the absolute necessity of having to pay so much of his own costs as would have been incurred by suing a pauper defendant.

2012. But supposing that it was a manager, he might not be a pauper?—Then one would think, as I told you, that if the manager is not a pauper, the person injured has his option; he may bring it against him, he may bring it against the master, and under the present system he may bring it against both alternatively; but supposing he brings it against the master, as I have said, in my opinion the master would have an action over against the responsible manager to recover the damage which he has had to pay to the servant.

2013. That would be two actions?—Under the present system you may bring them into one.

2014. By the same action?—I think so; that may be matter of debate. I believe we had the point the other day; but I think the defendant, the master, might, if he thought his manager a responsible man, apply to have him brought in as between those two. I think so; but I am giving you an opinion now on a point of law.

2015. You do not think it would be desirable to make it compulsory?—No, I think not.

Chairman.

2016. Have you any other suggestion to make?—There is one suggestion which I forgot to make, that if you mistrusted juries (which I told you I do not) as to giving too large an amount of damages, it struck me that you might apply a new system of law, and say that the jury were not to give a sum once for all as damages, but that they might state what would be a fair sum to be paid to a man for a certain time, unless he previously recovered from the effects of the injury, so much a week; and you might make a decree upon the master to pay accordingly. That is a suggestion only.

Chairman—continued.

Mr. *Ripley.*

2017. You assumed, in reply to the question of the honourable Member for Leeds, that these accidents were not of daily occurrence, and possibly not very frequent; if it was brought to your knowledge that accidents do unfortunately frequently happen, take say the ironworks over the country, and that they are almost of average daily occurrence in the year, and that in many other factories there are constant accidents happening, which in the present state of the law the parties never think of attempting to recover for, would that alter your opinion at all; and if it was shown to be the fact that these accidents do happen constantly and daily, and that there would be a great deal of litigation that would ensue?—You see I have been led into your question by departing from what I first laid down, which was to give no opinion upon expediency; but of course the frequency, if it exists, could have no effect upon what I thought was just and reasonable. If the accidents to which you allude are the ordinary results of the business, happening without negligence, no one would be liable, no one now is liable; if you allude to accidents caused by negligence, I still venture to doubt whether they occur daily or frequently.

Mr. *Attorney General.*

2018. Is it not the fact that the exception which you seem to consider unjust is as old as the unjust rule?—We must assume, as I have told you before, that the law always was so; but as far as I know, the first time that the principle which is old was applied to such facts, was the case of Priestly and Fowler, which is not old.

2019. What principle is that?—The principle of the non-liability of a master to one servant on account of the negligence of the other, and that put upon the principle that it was either an implied contract, or because the servant, when he took the employment, knew of the danger he was going into.

2020. It was then declared what the law had been from the beginning?—The principle which had existed from the beginning was applied to a state of facts brought for the first time before the courts.

Mr. *Knowles.*

2021. Then you conceive that there is no difference in the relationship between a master and a servant to whom he pays wages, and the master's relationship to a stranger?—As to the point in question I cannot see any.

Mr. Edward Netterville Blake, called in; and Examined.

Chairman.

2022. You are a barrister, I think?—I am.

2023. Have you any information you can give us with regard to the law in America?—I have considered that subject, and I think I shall be able to give an explanation on it. Perhaps it would be better, as I have already stated to my friend Mr. Gibson, some of the material points on which I can give evidence, if he would put questions to me.

Mr. *Gibson.*

2024. I believe that you have devoted a good deal of attention to this question?—I have devoted a good deal of attention to it.

2025. As a writer in the "Irish Law Times" you have had occasion to study it?—Yes.

2026. And you have written a variety of articles on it?—Yes.

2027. The law in America, I believe, is substantially the same as the law of England on the question?—Substantially, on the whole.

2028. The decisions of the Courts in the different States have merely applied the English common law?—Yes.

2029. Developing it according to the different circumstances that have arisen in America?—Yes.

2030. I believe in one State it has been made the subject of statutory law?—Yes.

2031. That is the State of Iowa, is it not?—Yes.

2032. That is the only one of the United States that has made this the subject of an Act of Parliament?—It is the only one which I can say without doubt has made it a subject of legislation.

2033. The other States have been satisfied to rest upon the common law?—I believe so. There are some statutes in other States, but it is a question whether they apply to this particular matter or not. There are even conflicting decisions in America upon those statutes; so when I say there is only one statute, there is only one statute which is certainly applicable and directly applied to this matter.

2034. I believe when you say there are others in which there is a doubt, you are referring only to one State, the State of Missouri?—Yes.

2035. You are not able to say that there is any other State in which there is a doubt?—No.

2036. The last decision upon that Missouri statute is, that it does not apply?—That it does not apply.

2037. So that there is only one State which has by law taken away the exemption of masters for injuries that are caused to their servants by the negligence of servants in the same employment?—That is so, as far as my knowledge extends.

2038. Can you tell the Committee if the course of decisions in the different States on the common law has been to develop the liability of masters and to narrow the exceptions?—The tendency of the modern decisions, so far as I have been able to gather, is to hold the masters to a stricter liability for injuries sustained by their servants through the negligence of other servants in their employment.

2039. You were here when Lord Justice Brett was examined?—I was.

Mr. *Gibson*—continued.

2040. And you heard what he stated in reference to making a change in the law about masters having knowledge of the defects in their machinery?—Yes.

2041. I believe that the way the exception, as stated in America, is in the following terms, which I will read to you from a paper written by Judge Cooley: "The master may also be negligent in not exercising ordinary care to provide suitable and safe machinery or appliances, or in making use of those which he knows have become defective, but the defects in which he does not explain to the servant, or in continuing ignorantly to make use of those which are defective, where his ignorance is due to a neglect to use ordinary prudence and diligence to discover defects"?—That is so stated by Judge Cooley.

2042. And do you believe that that is the way the exception is applied in America?—I have so found it. I may state that he is the Chief Justice of the Supreme Court of Michigan. I have got the paper here, which was a very able paper, by the Chief Justice, published last year in "The Southern Law Review"; it has since been republished as a separate treatise, and as far as I can gather from the various legal periodicals in America is accepted there as containing an accurate statement of the law.

2043. What has been stated by him as to the liability of a master in relation to exposing persons to perils in his service where they are young and have no experience; that is the second exception, I think?—He says: "The master may also be guilty of actionable negligence in exposing persons to perils in his service which, their youth or inexperience do not fully understand and appreciate, and are injured in consequence."

2044. Do you know what is the law in America, or what is the tendency of the law in America, when the negligence occurs in the case of a corporation, or a person who does not himself take an active part in his own work?—The law on that subject has undergone a great deal of recent consideration in America. It is not very fully developed by Judge Cooley in this paper, but I have myself investigated the recent cases on the subject, and I may say that they have gone at all events to this extent, that it being the fact that a corporation cannot, practically speaking, be guilty of negligence personally, some, at all events, of its agents must be assumed to represent the corporation so as to make the corporation liable if its agents by their negligence injure another servant. When I say "agent" I mean a certain servant. Then as to who would constitute such an agent, that is a matter of some doubt upon the American authorities; at the present moment there is a conflict between them, but they at all events do go to this extent, that an officer or general superintendent with large discretionary powers would so represent the corporation that they would be liable in that case. There are acts which if done by an agent of a lower grade would render the corporation liable; those are acts which are such that a corporation cannot delegate them to be performed. For instance, I might refer to a very recent case, of Malone against Hathaway,

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that was decided last year; and there it was laid down that, "When the servant by whose act of negligence or want of skill other servants of the common employer have received injury, is the '*alter ego*' of the master to whom the employer has left everything, reserving to himself no discretion, then the middleman's negligence is the negligence of the employer, for which the latter is liable. The servant in such case represents the master and is charged with the master's duty. . . . When the middleman or superior servant employs and discharges the subalterns, and the principal withdraws from the management of the business, or the business is of such a nature that it is necessarily committed to agents, as in the case of corporations, the principal is liable for the neglects and omissions of duty of the one charged with the selection of other servants, in employing and selecting such servants, and in the general conduct of the business committed to his care." Now that was decided previously to this case by a case of Lanning against the New York Railway Company; and further on in that case it is observed, "But when the principal is an individual acting *sui juris*, and there is no evidence of a surrender of power and control to any subordinate, and is present himself superintending the establishment in person no such presumption arises, or responsibility attaches, in respect of the acts of a competent and proper foreman." Now there was a very strong case on that subject, of Flike against the Boston and Albany Railway Company. There it was held that a person called "the despatcher of trains" represented the corporation, so as to make the corporation liable for an injury caused to a fireman by reason of the train having been sent out with only one brakemen upon it instead of two; because that is one of those acts, as I take it, which a corporation is bound to look after itself if it could; or, in other words, which an individual employer would be bound to look after himself; he should see under the present law, both in America and here, that he has sufficient hands to work his establishment; and, therefore, in that case the corporation would be liable just as much as an individual.

2045. On the ground that the despatcher of trains must be assumed to have had delegated to him some of the superintending control that the master, if he was himself managing the business, would have been bound to exercise; that is the principle upon which you understand that to be based?—Yes.

2046. Will you tell the Committee if there has been any definition in American cases of a collaborateur?—On that subject there has been a great deal of difference of opinion amongst them, and there has been a tendency in some parts to make the rule with regard to the non-liability of the master in the case of injuries committed by one servant upon another, to apply, except only where the fellow servant who commits the injury is in a superior grade to the servant who is injured. Again, in other States, there has been a tendency to make that rule apply, except only where the servants are in the same department of business. But on the whole, as far as I can gather it, and stating it from a very recent case, the rule it would seem to be now generally accepted "that all who serve the same master work under the same control, derive authority and compensation from the same source, and are engaged in the same general business, though it may be in different grades and departments of it, are fellow servants, each taking the risk of the other's negligence." That is very much the same as the rule prevailing in our own country.

Mr. *Gibson*—continued.

2047. Can you tell me what is the rule in America where two independent steamboats or railroads are separately owned and managed, but run for the joint profit of the owners?—That was decided in the case of Connolly against Davidson, in America, in this way: there were two independent railroads or steamboats which were separately owned and managed, but run for the joint profit of the owners, and it was decided that there, "while the owners might be partners as to third persons in the business of running each, the employés on each, though they were engaged in the common enterprise of maintaining and operating that railroad or steamboat on which they were respectively employed, and assume the risks incident to that business, cannot be said to assume the risks incident to the business of maintaining and operating the railroad or steamboat upon which they are not employed," and, accordingly, that they could not be considered as fellow servants.

2048. From your reading of these cases, are you able to say whether any definite rule has been adopted in Ohio on the question?—Yes. There is a curious rule adopted in Ohio. There it is held, "that the master is not liable to one servant for injuries received from the negligence of a fellow servant where no relation of subordination or subjection exists between them while engaged in the business of their common employer." For instance, to explain that: "A person repairing the track and a hand on the engine were held to be fellow servants within this rule." So again, "it was held that where one servant is placed in a position of subordination to and subject to the orders and control of another servant of a common master, and the subordinate servant, without fault of his own, and while in the performance of his duty, is injured through the negligence of the superior servant while acting in the common service, an action lies against the master."

2049. The principle has been established in Ohio that the gradation of superiority of one servant over another makes a distinction which makes the master liable?—Yes.

Chairman.

2050. That is by cases, not by law?—Yes, by cases. I may observe on that subject that the common law, of course, of our country, became part and parcel of the law in America; and, accordingly, the first time when this rule with regard to the non-liability of the master in case of injuries to servants became established in America was subsequent to that case of Priestly and Fowler. It first became generally established in the year 1842; it was decided by a well-known case before Chief Justice Shaw, of Farwell against the Boston Railway Company, in 1842, and he, while adopting the common law and approving Priestley and Fowler, went himself into the consideration of the case very elaborately; and the way that he arrived at the conclusion was this, that he considered the liability in such case, if it could be established at all, should be established on the ground

Chairman—continued.

ground of an implied contract by the master to indemnify his servant against injury. He, in coming to a conclusion that there was no such implied contract, went into questions of general policy and public convenience, (as all judges when they go into a question of implied contract say that they are entitled to consider those matters) and he said that he considered that it would open the way to a great many grievances; and he says this, that on the whole there was neither principle, nor authority, nor public policy, to justify an extension of the rule, which we have heard spoken of by the last witness, rendering the master liable to third persons.

Mr. *Gibson.*

2051. I think that Mr. Justice Cooley summed up the American law, the law as it prevails in America, in the last paragraph, which perhaps you will read to the Committee?—Yes; he says, "Perhaps this whole subject may be accurately summed up in a single sentence, as follows: The rule that the master is responsible to persons who are injured by the negligence of those in his service is subject to this general exception; that he is not responsible to one person in his employ for an injury occasioned by the negligence of another in the same service, unless generally or in respect of the particular duty then resting upon the negligent employé the latter so far occupied the position of his principal as to render the principal chargeable for his negligence as for a personal fault."

Mr. *Attorney General.*

2052. Do you understand that to be the summing up of the common law on the subject?—Yes.

2053. Did you say that in one of the States in America there was special legislation on the liability of masters for the acts of their servants generally?—Not generally; as to railway companies.

2054. Simply as to the liability of railway companies?—Yes.

2055 To the general public or to their servants?—To the public and to the servants; but only in the case of a railway company.

2056. What is the provision?—The provision is to this effect (I believe these are the exact words; I am now reading from a copy, not from the Act itself): "Every railroad company shall be liable for all damages sustained by any person, including employés of the company, in consequence of any neglect of its agents, or by any mismanagement of its engineer or other employés of the company."

2057. That would make a railway company liable to all the world for damages occasioned by the negligent act of any one of their servants?—Yes.

2058. As far as you are aware, that is the only legislation there is on the subject?—That is so; and when I say so far as I am aware, I have investigated it very carefully.

2059. All the rest of the rules you have spoken of are rules deduced from what is supposed to be the common law?—Yes.

2060. Taking apparently, on some points, a rather different view from that taken in England?—On some points there is a difference of opinion; but on the whole I think it must be said that they agree with the law in England, except as

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regards that question of the liability of corporations, and except further the question whether or not the act of a vice-principal will render the employer liable.

2061. It seems to be the law, as far as I understand, in America, that the master is liable for the action of a vice-principal, liable to his servants and not only to the general public?—Yes; but in England I understand that that can hardly be said to be the law now, according to the recent authorities; but up to recently it was certainly assumed to be so.

Mr. *Macdonald.*

2062. You have stated that you know the law in America; is that by residence there, or by simple study?—By study.

2063. You have not been there at all?—Never.

2064. Then let me ask you, are you aware that the law of California has been considerably altered in regard to this very question?—No.

2065. Are you aware that in the State of New York very considerable modification has taken place, and a celebrated case happened in 1876 against the City Hall Corporation, where the law had an entirely different reading; are you aware of these modifications?—The case to which I referred was a case in New York, which was decided in 1876, and that is probably the case that made the modification you are referring to.

2066. You are aware, I presume, that the law is not the law of all the States, but of each individual State; there is not a general law existing, I mean?—No, it is the law of each State.

2067. As much as it is the law of England?—Yes; each State has its own laws; but each State in having its own laws has the laws of England, which are adopted as part of its common law.

2068. Are you aware that the law was considerably different before the judgment of Judge Storey in Massachusetts, to what it was after the decision?—I am not aware of it, and I do not think it was (or rather Chief Justice Shaw's) own observation shows that it could not have been so, because he says that the case before this was a case of first impression, and had never arisen before.

2069. Are you aware that Judge Storey borrowed the whole of his views from the case of Priestley and Fowler?—I am aware that Priestley and Fowler was cited, and cited with approval in that case, and that the judgment of the Chief Justice evinces considerable knowledge of Priestley and Fowler; but I would be very far from saying that he borrowed the whole of his views from that case. As far as I can see, from having read that case, he goes much more fully into this immediate subject than it was at all gone into by Priestley and Fowler. Priestley and Fowler, so far as it dealt with this immediate subject, did so more by way of illustration of the real narrow point which was decided there, and it is from those illustrations that the subsequent cases in England have developed that law, or rather, so applied its principles that it amounts to a development of it.

2070. Then there is no common law in the United States at the present moment you are aware, each State having its own separate rules and interpretation?—Each State has its own separate interpretation of the common law.

2071. Then, as in the case of Iowa, each State

Mr. *E. N. Blake.*

15 May 1877.

Mr. *Macdonald*—continued.

may change the common law of England how they think fit?—They are bound by the law itself as one court is bound by the law here, although it may arrive at a different conclusion from another court; so one State may arrive at a different conclusion from what would be arrived at by another State; but they are all bound by the same common law.

2072. Not in the case of the railway servants in Iowa, where it is altered by statute?—There it is by statute. Of course, I have made that exception.

Mr. Robert Knight, called in; and Examined.

Mr. *R. Knight.*

Chairman.

2073. What is your employment?—General Secretary of the Boiler Makers' and Iron Shipbuilders' Association.

2074. Have you any statement to make to us in regard to the subject before the Committee?—I have no written statement, but I may just say that I quite agree with the general principle laid down by my Lord Justice Brett, as far as the liability of the employer is concerned. When there really is some act which showed negligence on the part of the servant of an employer, and an accident is caused, I consider in that case, as my Lord Justice laid down, that the master should be liable for it; but there are hundreds of accidents that occur among workmen that an employer could not possibly be called upon to ask to compensate for. For instance, two men might be working together on the side of a boat and a chipping from the chisel of one man might fly and strike the other man in the face.

2075. Nobody would be liable for that, I suppose?—I should not think that anyone would be liable. I should not agree for the employer to be liable for such an act as that.

2076. I think our inquiry pre-supposes negligence of some kind in somebody?—Negligence of some kind; but where there is insufficient scaffolding, or a rotten rope provided, or anything of that sort, which would be the means of an accident occurring, then I do think that an employer should be responsible for it.

2077. Is he not responsible now?—Not if the work is under the superintendence of the foreman. The master is responsible if he superintends the work himself; but if the work is superintended by a foreman the liability is removed from him altogether.

2078. Are you quite sure of that?—I think that is the law; in fact I may say that we had a case in which a manager removed some shores from underneath a vessel, and the result of removing those shores was that the vessel turned over and killed four of our men on the spot and injured 17 more; and when the inquest was held the verdict of the jury was "culpable neglect on the part of the officials of the yard." Our Society took the matter up, and we tried to get compensation for the widows and those that were injured; but on account of the verdict of the jury being given that it was neglect of the officials of the yard, and not of the master himself, we failed to get anything for the widows or those that were injured.

2079. Is there anything else you would like to state?—I would also say that the question has been raised whether "when a man enters the service of an employer, he ought not to take upon himself the risks of the accidents that may arise from his fellow working men, as he can judge of their efficiency." But how can that possibly be when oftentimes a man has been in the employment of his master some six or 12 months, and then another man is engaged by his employer or by his manager, who is quite incapable of performing the duties that he is put to perform, and the result of the incapability of this man is that it ends in an accident. Suppose the case of a man who has charge of a boiler in a shop; oftentimes there are boilers that are placed in a shop where there are a number of men working; and suppose a man that is not competent for his work is placed there in charge of that boiler, those men who had been working for that employer for some considerable time have no possible means of ascertaining whether that man is capable, or does understand what he is put about; and the result is that on the first or second day an explosion takes place, and some of the men in the shop are killed. I think in a case of that kind an employer should be liable for the damages that may ensue.

Chairman—continued.

2080. Is there any other case that you wish to state to us?—I know from experience that many managers and foremen receive a bonus in addition to their stated salary, for getting out the work as quickly as possible and at as cheap a rate as possible; and to do this very often they force the men on to their work, and compel those men sometimes to go in dangerous places, and do not provide sufficient scaffolding for them to do their work upon, by which accidents occur.

2081. Is there anything else that you would wish to state?—I could state a number of cases in which accidents have occurred, if it were desired.

Mr. *Tennant.*

2082. Will you tell the Committee what sort of officials those were in the dockyard through whose negligence this vessel, of which you have spoken, heeled over?—The blocks were taken out by the order of the manager.

2083. What position was that man in?—He was the head manager of the yard.

2084. And it was by his orders?—By his orders to the foreman under him; and the foreman again ordering the men to remove those blocks from underneath the vessel, it endangered the safety of the vessel, and the ultimate result was that the vessel turned over.

2085. You say, in such a case as that the master should be held responsible?—I think so.

2086. But would you go further than that?—Yes, to the workmen, if it was caused through negligence.

2087. Supposing that the master employs a competent manager (the case you mentioned was a case of incompetent managers being employed), and an accident arises through the carelessness of

Mr. *Tennant*—continued.

of that manager, and, contrary to the orders given him by the master himself, would you then say that the master should be responsible?—I think so; a master is responsible for the actions of his servant, if a stranger is injured by him, under the general law, as laid down by my Lord Justice Brett, and I think the same should apply to a fellow workmen.

2088. You agree with Lord Justice Brett?—Yes; I stated at the commencement that I quite agree with the general principle laid down by him.

Mr. *R. Knight.*

15 May 1877.

Mr. JOHN GILLESPIE, called in; and Examined.

Chairman.

2089. WHAT is your employment?—I am Secretary for the Association of Miners for Stirling and Linlithgowshire.

2090. What sort of mining?—Coal and ironstone.

2091. Have you any statement you would like to make to us?—I have not prepared any written statement, but I would say that I think the present law of liability, so far as fellow workmen or collaborateurs is concerned, is wrong; and I think that the law of liability of the employer for negligence on the part of one servant towards another, should be assimilated to the general law of the country; especially, I would say, with regard to our own employment, I would make the employers liable for accidents occurring through the carelessness or neglect of any party having charge under the certificated manager, or employer, down to the lowest person giving any orders to any of the workmen; and I would further say, that the question having been raised as to the liability of the employer to one servant who suffers injury through the neglect of a fellow servant, who may not be in the capacity of giving orders, I would, in cases where carelessness and negligence is shown on the part of such, make the employer liable. My reason for saying this is, that in our employment one workman has no control over the actions of the other workmen; morally it may be assumed that there is some control, but practically there is no control whatever; and further, it is a well known fact (and I have seen it done), that managers employ men to work in a mine who never have been in a mine or pit before, and put them to some kind of employment where they may, by their incompetence, cause injury to others, these others having no control whatever over their employment, over their being employed, or over their actions while following the employment to which they are put.

2092. Now supposing that such a law as you propose were passed, what should you say with regard to contracts, supposing the master proposed to his servant, when he came into his service, that he would contract that he should not sue him for any injuries that he received; would you permit that to be done or not?—I would not permit that to be done, because, in my opinion, it would lead to very great carelessness on the part of the employers, and to innumerable accidents occurring.

2093. Then you would prohibit the working man from contracting away his rights?—Yes, I would go that length; or, to put it in another way, I would prohibit his employer from contracting himself out of liability.

Mr. *Knowles.*

2094. You would also do away with the freedom of the man to make a contract if he felt disposed?—In the employment of mining I would say so, because a negligent workman, for example, who might contract himself out of getting compensation, might cause through his carelessness an explosion, say of fire-damp: he not only may injure himself but the likely result is that he will injure many more, and in some cases others rather than himself; he may even escape the consequence of his act, while others may suffer.

Mr. *Knowles*—continued.

Mr. *J. Gillespie.*

Mr. *Tennant.*

2095. Then what justice can you see in making the master responsible for such a matter as that?—There is one point; in the first place I think that it would tend to greater caution on the part of the employer, and would also tend to lessen the number of accidents occurring. That is one reason why I would say that there is justice in making the employer liable. And I would further say that there is justice in making the employer liable on account of one man, as I said before, having no control over the employment of another, or over the actions of that other while in that employment.

2096. Then you would even go so far as to say that a master should be responsible if a getter of coal were to open his safety lamp and light his pipe and explode that pit; do you go that extent?—I would go to the extent of saying that that man would show an amount of carelessness which ought to have been guarded against in his employment on the part of the manager, or those employing him. If he were to do that wilfully for the purpose of causing an explosion, I think that would be another matter.

2097. You could not suppose he would do it for the sake of causing an explosion; but supposing he did such a negligent act, and an explosion did follow?—I would give my reply founded on the same reason as another reply I have given. I would say, it ought to be done in that case, because innocent parties suffer who have no control over the act of that man. Incompetent persons are sometimes put there.

2098. We will suppose he is competent?—We will suppose him to be negligent and foolish. On that man being employed, his character and qualifications ought to be thoroughly sifted. I believe, that some men who are known to be reckless are employed.

2099. But I want to take the case of a man not known to be reckless, but on the contrary, known to be a careful and good miner; even he sometimes makes a mistake; and supposing such a man as that makes a mistake and the consequence is an explosion, would you then say the master should be responsible?—I would make him responsible, for the same reason that he is now made responsible for accidents or injuries suffered by a stranger.

Mr. *J. Gillespie.*

15 May 1877.

Mr. *Tennant*—continued.

2100. In fact, you would go to the extent of Lord Justice Brett, and put everybody in the same category?—I would make no distinction.

2101. Would you make the workman himself responsible for the consequences of his own folly?—If he did it wilfully, I would make him criminally responsible.

2102. But if he did it negligently?—Negligently, I think, implies criminally so far.

2103. But would you make a man criminally responsible for the consequences of an act he had done out of thoughtlessness?—If it could be proved to have been purely through want of thought, I believe there might be a distinction made in that case.

2104. And in such a case as that one would you make that man responsible who actually causes the injury?—I am not perhaps prepared, not having prepared any statement on the case, to go thoroughly into the matter; but really I do think that if a man negligently did it, and I think I might say "wilfully" is implied partly in "negligently," he should be so far responsible.

2105. You would make him responsible in damages, do you mean so criminally?—I would

Mr. *Tennant*—continued.

go the length of saying that the employer having put the man there ought to be directly responsible to the parties injured through the actions of such man, he having the power of employing and putting him there; and if the party injured thought it necessary, I think he ought to have the power to sue the man causing the accident separately, but I do not think jointly with the employer.

2106. Then if the workman chose to sue the rich man, that is the master, you think that the man who actually caused the injury should get off scot free if his fellow workmen liked; is that what you mean?—I say that the common law should take hold of the man if he was wilfully negligent.

2107. Take the case of his being not wilfully negligent, but negligent, and suppose an accident occurred, and a man was injured, do you think that that man who caused the accident ought to escape from all responsibility altogether?—I think not. I would go the length of making him also legally responsible.

2108. In damages, or criminally?—In damages, or criminally, as the case may be.

APPENDIX.

THE following DRAFT REPORT was to have been proposed by Mr. *Meldon*, but it was received too late to be considered by the Committee.

1. THE foundation on which the law has been established, rendering a man liable for personal injuries inflicted on others by negligence, though without malice or intention to injure, is, that while each person has the same right as another to pursue his lawful occupations, each is bound on that very account by principles of social duty to observe some degree of care not to come into collision with his neighbour to the injury of the latter; but, as in various exigencies of life, a necessity arises to intrust to others the performance of duties devolving on the principal himself, it became necessary for the law to regulate and define his accountability for the acts of servants or agents intrusted by him with the execution of his business; and this the law did from the earliest times by accepting the maxims of the civil law, "*respondeat superior*," and "*qui facit per alium, facit per se*," which obviously rested on the reason, that, as the master was himself liable for any wrong or injury to others in the execution of his business, so one whom he employed as his servant was his instrument, and imposed on him the same responsibility as if the act were done by himself; nor is it unreasonable that such should be the law, for it is more just that he who selects a person as his servant, from a knowledge of or belief in his skill and care, and who can remove him for misconduct, and whose orders that servant is bound to receive and obey, should suffer for the misconduct of that servant in the course of his employment, and in the fair advancement of the master's service, than that an innocent third person, who had not the opportunity of selection, or the power of removal, and enforcing obedience to his orders, should be prejudiced by such misconduct.

2. It is also the duty of a master to indemnify his servant from the consequences of doing, in obedience to his master's orders, any act, as for instance, the commission of a trespass on the property of another, pursuant to orders which he was bound to obey. But the master is not, in general, bound to indemnify him for injuries sustained in the course of, and incident to, the ordinary discharge of the duties for which he was hired; that is, at least, if the master provide competent fellow servants, and machinery reasonably proper, and adapted to the work in hand. This exception was first established by judicial decision in England in the case of Priestly *v.* Flower (A.D. 1837), holding that the principles of law already existing and accepted, should not be held to extend to such a case. In this sense, that decision was what is called judge-made law; a new doctrine developed by judicial reasoning; a process denounced by Bentham and Austin as a fraud on the Legislature, and a scandal to the public; but yet, the exercise of which is sometimes most salutary and essential to the administration of justice. The ordinary principle of "*respondeat superior*," adopted from general considerations of policy and security, would not apply if the relations of the employer and his servant, in reference to risks arising in the course of the service, were regulated by contract between them. It was held that they were so regulated by *implied* contract, and therefore that the maxim "*respondeat superior*" did not apply. In considering the rights and obligations arising out of particular relations, courts of justice regard considerations of policy and general convenience; and so upon a balancing of such considerations, illustrated by analogies, and arguing from the consequences that would follow in suppositious circumstances, the Court drew an inference from admitted rules, such as it seemed it would best promote the safety and security of all parties concerned. The *ratio decidendi* of that case embraced, although the decision itself did not actually include the case of an injury occasioned to servants by the negligent acts of other servants in the common employment. The question, however, as to what was the law in the latter state of facts, arose in America, and was definitively decided in 1842, in Farwell *v.* Boston and Worcester Railroad Corporation, holding that where a master uses due diligence in the selection of competent and trusty servants, and furnishes them with suitable means to perform the service in which he employs them, he is not answerable to one of them for an injury received by him in consequence of the carelessness of another, while both are engaged in the same service. Priestly *v.* Fowler was considered, so far as it went, to be opposed to a contrary conclusion; and considerations of policy again largely entered into the determination of the question. And afterwards, there was a direct decision in England, Hutchinson *v.* The York, Newcastle, and Berwick Railway Company, to the same effect, arrived at independently of the American case. In Scotland, however, the contrary was decided in Dixon *v.* Ranken, in 1852, where Lord Cockburn said: "I can conceive some reasonings for exempting the employer

Appendix.

from liability altogether, but not for exempting him only when those who act for him injure one of themselves. It rather seems to me, that these are the very persons who have the strongest claim upon him for reparation, because they incur danger on his account, and certainly are not understood by our law to come under any engagement to take these risks upon themselves." But in 1856, the House of Lords, in Bartonshill Coal Company *v.* Reid, held that the English rule of law should prevail in Scotland, where, as well as in Ireland, it has since prevailed, grounded not upon any matter, *juris positivi*, but looking to the general considerations arising from the relation of master and servants, *inter se*, and the relations external to their own body.

3. It still remained an open question, who were to be considered fellow-servants within the rule, and this judge-made law had to be developed from time to time, so as to comprehend some new combination of facts. This process of development led to the greatest dubiety, and even divergencies of opinion; nor can it even yet be deemed to have arrived at complete maturity. In Scotland it has been held by Scotch Judges of great eminence, that the exoneration of a master from liability for injury arising to one fellow-servant from the negligence of another, does not take place where the servant occasioning the injury is placed in superintendence, control, or authority over others; and in the Scotch appeal of Bartonshill Coal Company *v.* M'Guire, in 1858, Lord Chelmsford said that where servants are engaged in different departments of duty, an injury committed by one servant upon another, by negligence in the course of his peculiar work, would not be within the exception, and the master's liability would attach; while Lord Brougham held that the servants must be engaged in the same common work under the same common employment. But in 1868 the decision of the House of Lords on the Scotch appeal in Wilson *v.* Merry, established that workmen do not cease to be fellow-workmen because they are not all equal in point of station or authority; nor is it of any consequence that the position occupied in the organism of the force employed by the servants who inflict the injury, implies some special authority, or duty, or charge. Thus, by judge-made law, judge-made law has been set aside. Its uncertainty is further illustrated by the course of its development in America. In some States the rule exempting the master from liability is held not to apply where the servant who commits the injury is in a grade superior to that of the servant injured; in others, only to apply where the servants are in the same department of business; in others (the majority) to apply in the case of all who serve the same master, work under the same control, derive authority and compensation from the same source, and are engaged in the same general business, though it may be in different grades and departments of it. The latter view appears to express the view of the law at present received also in England, in the latest stage of its development. But there are questions on the English law on this subject still unsettled; thus, in Conway *v.* Belfast and Northern Counties Railway Company (decided February 1877, in the Exchequr Chamber, Ireland), it was treated as a question still open, whether a general traffic manager of a railway company might not be invested with such authority, acting as the representative of the Corporation, as to render them liable to a milesman injured by his negligence.

4. The foregoing facts and reasons *per se*, show that the term "common employment" should be defined by legislative enactment, and could be, at all events, more clearly than it is by the existing common law.

5. As to whether it would be expedient to alter the existing rule in the manner proposed, and inquired into by this Committee, it is to be observed that the relations of masters and servants *inter se*, and the relations external to their body now exist under circumstances very different from those that existed when it was held in Priestly *v.* Fowler expedient as a matter of policy that the law should be declared as it still prevails. At that time machinery was comparatively unused, and industrial and manufacturing operations were carried on by a small number of workmen who were under the immediate supervision of their employers. Now we have dangerous and complicated machinery in every possible industrial operation; the labourers are numbered by legions, and instead of being under the immediate eye of their employer, they are superintended by middle-men of a superior grade, whom the constantly increasing scale on which mining and manufacturing establishments are conducted, by reason of new combinations and applications of capital and industry, has called into existence; there are more gradations of servants, more separation or distribution of duties, and more delegation of authority; all kinds of trade and manufacture are carried on by corporations established under the recent legislation, which affords facilities for their formation, and whose concentrated wealth and power renders them more indifferent than mere individuals to the adequate discharge of duties towards their servants, which, even if they had the will, they have not the power themselves to perform, and for the neglect of which by others to whom such duties are now necessarily delegated those corporations are now irresponsible. Unless, therefore, the present law gives *some* means of redress for injuries occasioned to servants by the negligent acts of certificated managers of collieries, managers, foremen, and others to whom the general control and superintendence of workshops and works is committed, there is *primâ facie* now good reason for considering that the present law should be changed, which encourages all delegation of duty by the master by relieving him from responsibility when once he has delegated it.

Q. 1156. 1182.

6. Has then the servant *any* means of redress in such case? Lord Justice Bramwell told us that the servant injured could sue his fellow servant. But there never has been a decision

a decision in this country to that effect; and, on the contrary, Chief Baron Pollock stated in Southcote *v.* Stanley, that one servant cannot maintain an action against another for negligence while engaged in their common employment. Many of the considerations which led to the adoption of the rule exempting the master in such case, would equally apply to exempt the fellow-servant from liability; and that right to exemption has been upheld by express decision in America, in Albro *v.* Jaquith (1855). Neither would such right of action, if existing, give any sufficient means of redress in most cases; but, such as it is, if it does not at all exist, or if it is at least doubtful whether or not it does exist, the remedy should be provided in some cases by legislative enactment.

7. The Committee therefore recommend that it should be declared by legislative enactment:—

(*a.*) That employers should be liable to their servants for injuries occasioned by the negligence, in the common employment, of a fellow-servant occupying the position of vice-principal of any certificated managers of collieries, manager and deputy manager, and others to whom the general control and superintendence of workshops and works is committed:

(*b.*) That, in addition, in the case of corporations, they should be liable to their servants for injuries occasioned by the negligence, in the common employment of any servant in a superior grade, or employed in a different department of the business carried on:

(*c.*) That the term "common employment," as here intended to be used, should be defined as meaning employment in the same service and organisation under the control of, and compensated by the same employer, while engaged in the same general business, whether in the same or a different department thereof.

I N D E X.

[*N.B.*—In this Index the Figures following the Names of the Witnesses, and those in the Analysis of Evidence, refer to the Questions in the Evidence; and the Numerals following *Rep.* to the Pages in the Report.]

A.

ACCIDENTS. Numerous instances of accidents in engineering works, in which cases witness submits there should be a claim against the employers for compensation, *Burnett* 422–429——Belief that additional liability in the masters would ensure greater care on their part in selecting good men, and thereby diminishing the number of accidents, *ib.* 478, 479.

Examples of the accidents caused by negligent acts of miners, such negligence and such accidents being almost of daily occurrence; various accidents which are, on the other hand, beyond the control of employer or employed, *Simpson* 520, 521. 550–563. 596–598——Statement that the majority of accidents in mines which are the result of human agency are caused by common workmen, *Cole* 655. 683–688——Opinion that any alteration in the law increasing the responsibility of owners will certainly not contribute to the increased safety of mines, *ib.* 680–682.

Belief that the greatest safeguard against accidents in mines is to employ every effort to make the workmen acquainted with their individual responsibility; reference to the Report of the Select Committee on Accidents in Mines in the year 1835 in support of this opinion, *G. F. Smith* 724——Information with regard to the number of accidents which occur in mines as compared with other trades; calculation that for every twenty that are killed by gas explosions in mines there are forty killed by ordinary casualties, *ib.* 776–778.

Relative number of accidents which happen annually in collieries and in ironworks; conclusion that if the responsibility of the men is decreased by an alteration in the law it will certainly not tend to reduce the number of accidents, *Pearce* 848–853——Accidents from the falls of roof and coal amount to about forty per cent. of the total accidents from coal-mining, *Firth* 1019.

Statistical information relative to the loss of life in mines within the last thirty years; majority of accidents caused by explosions of gas, *Baxter* 1208——Different classes of accidents to which miners are liable, *ib.*——Instance of a loss of 20,000 *l.* through the setting on fire of a mine by the negligence of a workman, *ib.*

Decided importance of so legislating as to make miners more careful; this would tend more to lessen accidents than any care on the part of the manager, *Heath* 1402–1416——Belief that it would materially diminish the miner's care if the master were made responsible for every accident, *ib.* 1441, 1442. 1445——Considerable danger in lessening in any way the responsibility of the men; decided opinion that such a course would cause accidents to be more frequent, *ib.* 1456–1458. 1463, 1464.

Statement as to the number of accidents in witness' manufactory at Kidderminster; great majority of these caused by the carelessness of the workpeople, *Brinton* 1613–1615. 1617——Belief that further extending the liability of masters would not tend to make the men in engineering works more careful, *Robinson* 1638——Frequency of accidents in engineering works from carelessness of workmen, *Wren* 1750.

Examples of accidents which have occurred at the Victoria Foundry at Leeds; these are caused generally by the carelessness of the workpeople, *Craven* 1753, 1754——Inquiry into two of the cases of accident by the factory inspector, who decided that there was no fault on the part of the master, *ib.* 1753. 1755–1758——Numerous kinds of accidents which occur to workmen in engineering works for which a master should not be held liable; instances in illustration, *Knight* 2074–2077.

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ACCIDENTS—continued.

Witness submits that increasing the liability of the master would not have the effect of making the miners more reckless of accidents, *Brown* 1803–1807.

Belief that the number of accidents which occur through negligence to persons employed in labour is not very great, *Lord Justice Brett* 2010. 2017.

See also *Machinery. Mines. Negligence. Railways.*

AGENTS AND SUB-AGENTS (FOREMEN, MANAGERS, AND OTHERS):

Admission that there are cases in which the doctrine of rendering the master liable for injury caused by negligence of his agents would be, if strictly applied, very hard; such cases may be fairly left to a jury, *Burnett* 457, 458.

Advantage in the law making the master liable in so far as it tends to ensure choice of skilful servants, *Lord Justice Bramwell* 1100——Questionable state of the law where there is what is termed a vice-master; opinion, however, that there are cases in which a master should be liable for a vice-master, *ib.* 1114–1116. 1176–1182——Conclusion that the master should be rendered liable for injury occasioned by the negligence of his agent, *ib.* 1117–1119.

Objection in principle to a large employer who delegates his responsibility to another person being less liable than a smaller employer who conducts his own business, *Lord Justice Bramwell* 1173–1175——Decided approval of the master being liable in the event of his having knowingly employed a reckless or incompetent man; belief that the existing law is sufficient to meet such cases, *ib.* 1198.

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Argument that where an owner or a company delegates the management to another person the owner should be liable for his careless acts, and that the manager himself should also be liable; expediency, however, of excepting the principal manager from the law of common employment, *Robinson* 1638–1648. 1650–1653. 1660–1667. 1693–1701. 1704–1710—— Suggestion for registering all managers whose acts are to impose liability on their employer, *ib.* 1638. 1649. 1656–1659. 1662. 1666. 1683–1685——Necessity of indemnification of the manager by his employer if the former is to be made equally liable; improbability of anyone taking the post of manager without such indemnity, *ib.* 1643–1648.

Definition of the post of manager as far as regards the person who should be made liable for accidents, *Robinson* 1649–1653——Opinion that it should be made obligatory to define the manager by putting his name up near the entrance to the works, *ib.* 1656–1658. 1662——Approval of making it obligatory for an employer either to do the work himself, or to have a registered manager; in a private firm the acting managing director should be the registered manager, *ib.* 1668–1671——Opinion that it should not be made compulsory for a master to employ a vice-master, *ib.* 1714.

Conclusion that if the master were made liable for the acts of his manager, it would be the strongest inducement to him to employ the most competent man, *Robinson* 1715–1718——Improbability of a master employing as a manager some one to whom he would give no duty with the object of escaping liability, *ib.* 1718–1721. 1724. 1730, 1731.

Statement in support of the opinion that the manager should be registered as undertaking the responsibilities of the employer, *Wren* 1750——Absence of objection to making a master liable for the acts of a manager to whom he delegates his own duty *Craven* 1759–1762.

Liability of a master for his servant but not for his agent, *Lord Justice Brett* 1954——Conditional approval of making the employer liable for the acts of his manager, *ib.* 1957, 1958.

Numerous instances in which masters necessarily leave the whole conduct of their business to agents and managers, *Rep.* v——Conclusion of the Committee that the acts or defaults of the agents who discharge the duties and fulfil the functions of masters should be considered as the personal acts or defaults of the principal and employers, who should be liable for the same, *ib.*——Facility of establishing the delegation of authority in each case, *ib.*

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Baxter, Robert. (Analysis of his Evidence.)—Is a Parliamentary solicitor; is also a proprietor of mines, and has had large experience of the working of mines, 1204–1208——Statistical information relative to the loss of life in mines within the last thirty years; majority of accidents caused by explosions of gas, 1208——Different classes of accidents to which men working in mines are liable, *ib.*

Instance of a loss of 20,000 *l.* through the setting on fire of a mine by the negligence of a workman, 1208——Strong disapproval of so altering the law as to make the master responsible for all the numerous accidents which happen in a mine; impossibility under such circumstances for any capitalist to safely embark in mining undertakings, 1208. 1223, 1224. 1229. 1241——Statement that the average return upon capital invested in coal mines is but four or five per cent., 1208.

Deprecation of making the masters responsible for the misconduct of their managers; contention that in the event of wrongdoing by a manager he himself should be liable in the case of injury, 1208–1222. 1230. 1231——Disapproval of making the owner responsible in any case except that of a very small colliery which he works as his own manager, 1232–1240.

Probable effect of an alteration of the law in causing increased litigation, 1243, 1244——Statement that the miner is paid much higher wages on account of the dangerous character of his occupation; wages at least 50 per cent. higher than those paid to agricultural labourers, and very often treble the amount, 1245–1257——Wages lower in South Wales than in South Yorkshire on account of the work not being so dangerous, 1250–1253.

Influence of the miners' unions in limiting the production of coal in South Wales, 1254——Assertion that at the present time the colliery-owners are not making any profit, but are really carrying on the works for the benefit of the men, 1257–1259.

Benefit Societies. Strong approval of establishing by legal enactment a benefit society for each mining district to which both owners and workmen should contribute; means by which the funds of such society might be managed, *G. F. Smith* 728–730——Expediency of inducing workmen to contribute to relief and benefit societies for the purposes of insurance, *Knowles* 900. 963.

Blake, Edward Netterville. (Analysis of his Evidence.)—Considerable experience of witness, who is a barrister, in the American law; variety of articles written by him on the subject before the Committee, 2022–2026. 2062——Statement that the law in America upon this subject is substantially the same as that in England; decisions of the courts in the different States have merely applied the English common law, 2027–2030. 2060. 2067.

Explanation regarding the law of master and servant as practised in the different States; tendency of the modern law to hold the masters more strictly liable for injuries to servants caused by others in common employment, 2027–2061. 2068–2072——Information as to the operation of the American law of liability of corporations, 2044, 2045. 2053–2060.

Rule adopted in the State of Ohio as to the liability of the master depending upon the gradations of superiority of one servant over another, 2048, 2049——The whole subject summed up in a single sentence, as the law exists in America, by Judge Cooley; concurrence of witness in this view, 2051, 2052.

Absence of a general law in America upon this question, the law being that as interpreted by each State, 2066, 2067. 2070——Every State bound by the same common law with the exception of Iowa, where it is altered by statute, 2071, 2072.

Bowling Iron Company (*Bradford*). Provision of medical assistance and other means of relief in cases of accident by the Bowling Iron Company, *Pearce* 848–853.

Bramwell, Right Hon. Sir George W. W. (*Lord Justice of Appeal*). (Analysis of his Evidence.)—Extensive experience of witness in relation to cases in which the law of master and servant is involved, 1098, 1099——Exhaustive statement explanatory of this law; erroneous impression generally entertained that there is a natural right for the maintenance of actions against masters, in respect of negligence of their servants, 1100–1116. 1131–1142. 1153–1157. 1166, 1167. 1170–1172. 1176–1182.

Liability of a master for his servant's negligence under two different sets of circumstances; illustrations of these cases, 1100——Question considered as to the liability of the master for the servant's negligence being founded on the old Roman law; exception taken on this point, *ib.*——Approval of the law making the master liable in so far as it tends to ensure choice of skilful servants, *ib.*

Expediency of railway companies being liable for injuries to passengers on account of the pre-contract made with the passenger, 1101. 1120–1126——Opinion that there is no necessity for a change in the present law; emphatic disapproval of the existence of

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right of action against a master for the negligence of a fellow-servant, 1103. 1108–1116.

Comparatively recent date of the first case having reference to common employment, 1104–1112. 1129. 1186——Questionable state of the law where there is what is termed a vice-master; opinion, however, that there are cases in which a master should be liable for a vice-master, 1114–1116. 1176–1182.

Desirability of guarding against the general disinclination of servants to complain of each other, 1116——Belief that the servant has a better opportunity of judging of the conduct of his fellow-servant than the master can have, 1116. 1143–1152.

Contention that the master should be rendered liable for injury occasioned by the negligence of his agent, 1117–1119——Extreme difficulty in making a corporation liable for the negligent acts of its agents, 1117. 1182. 1201–1203——Argument that railway servants should have no remedy against their employers; reasons for this opinion, 1125, 1126. 1194–1197.

Definition of the term "implied contract," 1127, 1128——Possible evasion of the law, if altered, by the masters making contracts with their servants, 1141, 1142——General principle that if a workman is aware of the danger which exists from the employment of an unskilled person, he should not recover from the master; reasons for this negation, 1155–1157. 1197.

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Objection in principle to a large employer who delegates his responsibility to another person being less liable than a smaller employer who conducts his own business, 1173–1175——Anomalous character of the liability of a corporation as compared with that of an incorporated partnership, 1182.

Contention that a mine-owner should be liable for the negligence of his manager notwithstanding that he was certificated, 1183–1185——Further evidence with reference to the question of liability of the master in cases of common employment; opinion that, in the event of a fault on the master's part, he should be liable, 1187–1198.

Decided approval of the master being liable in the event of his having knowingly employed a reckless or incompetent man; belief that the existing law is sufficient to meet such cases, 1198——Doubt whether the law at present goes sufficiently far for the protection of masters; illustration of its hardship on masters, 1198–1200.

Breach of Rules. Circumstances under which a master should be held liable for injuries through breach of rules, notwithstanding his having laid down such rules for observance by his workmen, *Burnett* 501–508.

See also *Wilful Neglect.* *Workmen's Liability.*

Brett, Right Hon. Sir W. B. (Lord Justice of Appeal). (Analysis of his Evidence.)—Explanatory statement, in detail, relative to the present law of liability as between master and servant; opinion that this law should be exactly on the same footing as that in regard to strangers, 1915–1934. 1953, 1954. 1956–1967. 1968. 1970. 1976–1979. 1998–2002. 2006, 2007. 2018–2021——Various causes of injuries to workmen in connection with the liability of the master; the formula of the law is that there is no liability in the case of a defect in machinery unless it were known to the master and not to the servant, 1915. 1933. 1958, 1959. 1964–1966. 1980.

Information respecting the origin of the law; recital of cases illustrative of the various kinds of liability, 1916–1928. 1953, 1954. 2002. 2004——Concurrence in Lord Justice Bramwell's opinion that the liability of a master for his servant's acts is not a law of nature, 1919——Contention that in law there can be no implied contract unless it was in the contemplation of both parties when it was made; examples of implied contracts, 1919. 1926——Approval of submitting questions of liability to juries; inclination, however, of juries to give excessive damages in cases of injury, 1919. 1971–1975. 2016, 2017.

Case of Michael against Allestree, in which it is supposed that the law of liability of the master for the negligence of his servant originated, 1919——Grounds for the conclusion that the principle *Qui facit per alium, facit per se,* is the doctrine governing the liability of the master; concurrence in Lord Justice Bramwell's opinion that this principle is not altogether a just one, 1920, 1921. 1926. 1949–1951. 1978, 1979.

Decided opinion that the non-liability of a master to a servant for injuries caused by a fellow-servant is not theoretically just; grounds for this conclusion, 1926. 1930, 1931. 1955–1957——Explanation of the law regarding common employment; contention that it is no part of a man's duty to supervise the acts of a fellow-workman, 1926. 1968–1975. 1981–1988. 1994–1997.

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Belief that the large amount of damages which might be inflicted on a master by the negligence of his servants is a reasonable objection to altering the law, 1926—— Argument that there should be no cause of action in the case of gas suddenly breaking out in a coal-mine when ordinary care had been taken, *ib.*

Opinion that the non-liability of a master to his servant is a bad exception to a bad law, 1931——Contention that a master who has not exercised due care in employing a skilful servant should be made liable for his acts, as in that case it becomes personal negligence on the part of the master, 1932.

Strong disapproval of allowing the master to contract himself out of liability for negligence to his servant; the condition of the master and servant, as contracting parties, would not be equal, 1935–1945. 2003–2005. 2008 ——Expediency of giving masters the power to insure against liability for their servants' negligence, but not against liability for their own, 1940–1942. 1946, 1947——Limitation of the power to contract between a seaman and his employer, 1936-1938. 1945.

Argument that a servant cannot claim compensation from his master for any injury which is the ordinary result of the employment; risks of injury must be taken by persons entering dangerous employments, 1944, 1945. 1989–1993——Liability of a master for his servant, but not for his agent, 1954—— Conditional approval of making the employer liable for the acts of his manager, 1957, 1958.

Liability of a shipowner for the negligence of any of his seamen, as in case of accident through want of a proper look-out; liability also of the shipowner if the ship be unseaworthy, notwithstanding that he is ignorant of the fact, 1960–1966 —— Difference of the Scotch to the English law, until a few years back, in its more favourable treatment of the workman, 1967——Examination as to the definition of "common employment," 1968–1975. 1981–1997.

Decided opinion that the largest possible power should remain with juries, 1971–1975 ——Anomaly in making a distinction between the liability of a master to a stranger for the servant's negligence, and his liability to another servant, 1976–1979——Expediency of removing the necessity of proving the knowledge of the master in cases of injuries resulting from machinery, 1980. 1984.

Impossibility for a servant to recover from his master for injuries received, if he continues to work with fellow-servants whom he sees are negligent, 1987——Argument that as long as the general law of master and servant exists it will be right to make the master liable for injuries inflicted by fellow-servants through negligence, 1988–1993.

Opinion that negligence is not a thing to be contemplated as the ordinary result of any employment, 1990. 1993——Conclusion that if a right of damages were given to the servant against his master for negligence of a fellow-servant, it would have no effect in either diminishing or increasing the supervision exercised by servants over each other, 1994–1997.

Difference of opinion on the part of the judges upon the question whether calling out the name of a station is an invitation for the passengers to alight; decision of the House of Lords that this question is not for the judge but for the jury, 2002.

Further explanation in relation to the means by which a master might contract himself out of liability, 2008–2010—— Belief that the number of accidents to persons employed in labour is not very great, 2010.

Doubtful expediency of making it compulsory for a workman, when suing the master for an injury, to include in the action the actual perpetrator of the injury; grounds for this opinion, 2011–2015——Suggestion that if any new system of law be applied in actions for damages for injuries, the juries should be instructed not to give a sum once for all as damages, but that it should be given to the man from time to time, 2016.

Briggs, Henry Currer. (Analysis of his Evidence.)—Is chairman and managing director of several iron and coal companies; has had a large experience, extending over twenty years, in the management of collieries, 1260——Submits that the present law as to the liability of employers goes as far as justice demands; grounds for this conclusion, 1261. 1273–1277.

Contention that the position of a coalowner is analogous to that of a shipowner, who is bound by law to employ a competent pilot, 1261——Moveable character of the generality of workmen employed in mines, *ib.*——Conclusion that the high rate of wages paid to miners is to cover the risk of danger, 1261. 1278–1285.

Theoretical rather than practical hardship of the present law regarding small proprietors, 1261——Strong opinion that any alteration in the law increasing the responsibility of owners will be prejudicial to the public interests, and also ot the workmen; reasons for this conclusion, 1261–1272——Expediency of making the owner liable for the employment of an unskilful manager, 1262–1272.

Advantage of two managers in a mine, one responsible above ground, and one below, 1272——Absence of comparison between a railway accident and a colliery accident by

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reason of the contract made with the passenger, 1274–1277. 1286–1289——Information in regard to the average amount of wages paid to the miners in the Stanley Main Seam, 1278–1281. 1290, 1291.

Brinton, John. (Analysis of his Evidence.)—Is a millowner at Kidderminster, and head partner in a large carpet-manufacturing firm, 1612, 1613——Statement as to the number of accidents in the manufactory; great majority caused by the carelessness of the workpeople, 1613–1615. 1617——Surgical treatment and subsequent maintenance provided at the cost of the firm in cases of accident; encouragement by the firm of a sick club, 1613.

Expediency of giving factory inspectors power to bring actions on behalf of persons injured; belief that this would help to do away with speculative actions, 1613–1619. 1621–1629——Power under the Act of 1844, which is omitted in the present Bill, for the factory inspector to initiate actions for injuries, 1614, 1615. 1629——Instance of speculative action against witness, who had to pay 200 *l.* costs notwithstanding that he won the case, there being not a farthing on the other side; inference drawn from this that people should not be permitted to bring actions without the consent of the inspector, 1615–1617. 1627, 1628.

Argument that the liability to speculative accidents in many cases prevents the master from contributing in cases of injury from the fear of appearing to "admit liability," 1617——Certain cases in which it is proper that actions should be taken against masters, *ib.*——Belief that on the whole there is sufficient protection for workmen if the statutory penalties are enforced against the master by the factory inspector, *ib.*

Brown, William. (Analysis of his Evidence.)—Large experience of witness in mining operations; he is at present miners' agent at Stoke-upon-Trent, 1763–1767. 1838–1844——Exhaustive statement in relation to the question before the Committee as affecting miners; decided opinion that a master should be made generally responsible for the acts of his managers, 1766–1769. 1772–1780. 1786–1802. 1808. 1819–1837. 1879–1882. 1908–1913.

Disapproval of a certified manager being considered a fellow-workman; grounds for this opinion, 1767. 1830——Information regarding the use of the safety-lamp in North Staffordshire; expediency of establishing a system of examination for the men in relation thereto, 1767. 1769, 1770. 1783–1785. 1790. 1799, 1800. 1848–1865——Description of the method of ascertaining by means of a safety-lamp whether gas is present in a mine, 1859–1863.

Large number of unskilled workmen employed in mines at low rates of wages; danger to the other workmen occasioned by this system, 1767. 1845–1851. 1854——Great importance of prohibiting blasting with gunpowder in a mine where it is necessary to use safety-lamps; opinion expressed by Mr. Wynne, inspector of mines, in support of this assertion, 1769–1771. 1876–1878. 1895–1901. 1914.

Desirability of making a master liable for the acts of the lowest man in a mine who is considered in any way a manager, 1772–1778. 1808——Disapproval of making the master liable for injury caused by the wilful disobedience of his orders, 1781, 1782. 1797, 1798——Contention that if the Mines Regulation Act is strictly carried out accidents from gas in mines would be of very rare occurrence; great importance of following the directions of the Act as regards ventilation, 1791, 1792. 1869–1875.

Argument that if masters are made liable for any act in a mine which causes injury, no matter who does it, it will conduce to the more careful selection of competent workmen, 1801, 1802——Assertion that increasing the liability of the master would not have the effect of making the men more reckless, 1803–1807——Inability of workmen to control in any way the actions of their fellows in the mine; penalties imposed for interfering directly or indirectly with other men, 1809–1818. 1883. 1886.

Expediency of making it incumbent upon masters to prove that they were blameless whenever accidents occur from explosions of boilers, or from other causes, through the negligence of the men; belief that in these circumstances the law would exonerate them from liability, 1819–1833. 1882. 1908–1913——Decided opinion that it would greatly conduce to the safety of mines if they were so well ventilated that naked lights might be used instead of lamps; importance of sinking more shafts than is the custom at present, 1864–1869.

Statement that not one-half of the men killed in mines are killed by gas explosions, 1870——Difference of opinion between Mr. Wynne and other inspectors of mines with reference to the use of blasting-powder, 1876–1878——Information as to the right of miners to depute some of their own body to examine the mine and all the machinery connected with it; opinion that this power does not help the men very much on account of the surrounding circumstances being liable to sudden change, 1883–1894.

Permission from the manager requisite for the miners' deputation to visit the engine-house; infrequent examinations of the machinery by the men, 1887–1894——Less danger

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Brown, William. (Analysis of his Evidence)—*continued.*

danger in using cartridges for blasting purposes than in using loose powder, 1895, 1896. 1898——Increased cost of getting coal by means of wedging over the cost of getting it by powder; advantage of wedging over blasting as regards the quality of the coal, 1897-1901——Causes of fast or blown-out shots when blasting, 1897, 1898.

Belief that the improvement in mines on account of having certificated managers under the Mines Act has not been as great as is desirable; disinclination of these managers to go much into the pits, 1902, 1903——Examination of the managers as to their competency by a board which includes representatives of the men, 1904-1906.

Burnett, John. (Analysis of his Evidence.)—Is secretary to the Amalgamated Society of Engineers, 421——Constitution and operation of the benefit society of the engineers, 422.——Comprehensive statement as to the necessity of altering the present law in regard to master and workman; decided opinion that common employment should not be a bar to prevent the workmen obtaining compensation for injuries, 422-436. 447-452. 457-4672 509-517.

Numerous examples of cases of injury to workmen which should be compensated for by the employer, 422-429——Frequency of injuries resulting from putting on belts without stopping the machinery; necessity for making the employer liable for these accidents on account of the absence of rules to govern the stoppage of machinery, 423. 426, 427. 444-446. 460-467. 499. 502-508.

Conclusion that an employer should be liable for defective machinery, whether he was able to discover the defect or not, 427. 440-443. 484-491——Illustration of the distinction to be drawn between liability and non-liability on the part of the employer for injuries suffered by workmen, 429. 463-456——Abortive attempt to obtain compensation from a railway company for the death of a station-master; plea of common employment in this case, 429. 494-496.

Desire for a restoration of the law to the state in which it was previous to the judicial decisions which set up the doctrine of common employment; opinion that this is more necessary than an actual change in the law itself, 430-436——Argument that in the case of injury to a servant using his master's dogcart, the master is liable if the business is his own, but not liable if it is used for the servant's business, 437-439.

Non-existence of liability on the part of the employer where contributory negligence is clearly proved against the person injured, 445, 446. 480-483. 492, 493——Admission that there are cases in which the doctrine of rendering the master liable for injury caused by negligence of his agents would be, if strictly applied, very hard; opinion that such cases may be fairly left to a jury, 457, 458——Conclusion that a master would not be liable for injury caused by a workman's direct violation of regulations adopted for safety, 460-467. 493.

Statement that an alteration in the present law would have no effect whatever on the subscriptions to the engineers' benefit society; grounds for this opinion, 468-472——Impression that the tendency of an alteration in the law such as proposed would be to increase rather than to diminish wages; reasons for this view, 473, 474.

Belief that the additional liability on the masters would ensure greater care on their part in selecting good men, and thereby diminish the number of accidents, 475-479——Infrequency of accidents caused by undiscoverable flaws in machinery, 484-486.

Disinclination to hold a mineowner liable for compensation in the case of a workman causing injury by going into a mine with a lighted pipe, 497-500——Circumstances under which a master should be held liable for injuries through breach of rules on the part of his workmen, 501-508.

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Capital. Prejudicial discouragement to the investment of capital by so altering the law as to make mineowners responsible for all the numerous accidents which happen in mines, *Baxter* 1208. 1223, 1224. 1229. 1241——The average return upon capital invested in coal-mines is only 4 or 5 per cent., *ib.* 1208.

Discouragement to the investment of capital in industrial undertakings by abolishing the defence of "common employment," *Rep.* iv.

Carelessness of Workmen. See *Accidents. Mines. Negligence.*

Carriage Accidents. Argument that in the case of injury to a servant using his master's dogcart the master is liable if the business is his own, but not liable if it is used for the servant's business, *Burnett* 437-439——Belief that in the case of a carriage accident the only reason the master is made liable is that he is the only one who has money, *S. Smith* 1557.

Cole, William Richard. (Analysis of his Evidence.)—Is a mining engineer at Newcastle-on-Tyne; represents the North of England United Coal Trade Association, 653, 654——

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Cole, William Richard. (Analysis of his Evidence)—*continued.*

Submits that the general law as applied to miners is sufficiently broad to be consistent with justice; contention that it would not be equitable to make an owner responsible for injuries to a servant consequent upon the negligence of a fellow-servant, 655-676.

Desirability of making the owner liable when he has provided works of an insufficient character, or employed grossly incompetent servants; approval also of making it incumbent upon masters to employ competent managers, who should employ under them competent foremen, 655. 657-672. 694-703——Statement that the majority of accidents in mines which are the result of human agency are caused by workmen, 655. 683-688.

Examples of accidents in mines for which the owner should be liable, and also of those for which he should be not liable, 655——Infrequency of accidents through the fault of managers; instance of a manager who was fined 5 *l.*, but who was not expelled from the association, 655, 656. 689-693. 712-720.

Decided opinion that to in any way lessen the individual responsibility of the miners would only tend to laxity of action on their part: undue responsibility to be thrown on the manager and the owner, 655. 680-682——Existence of a permanent fund for relief in cases of accident; contributions to this fund by the masters of twenty per cent. on the amount subscribed by the men, 677-679.

Belief that an alteration in the law increasing the responsibility of owners will not contribute to the increased safety of mines, 680-682——Expediency of making it imperative that a certain amount of responsibility should rest on the workman as well as upon the manager, 682.

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Argument that the fact of common employment in a mine should not be a valid objection to the common employer being sued, *Pickard* 76——Decided opinion that the fact of the injured person being in common employment with the person who causes the injury should not be available as a defence; expediency of leaving the law otherwise as it stands, *Cook* 312-327. 343-356. 416-419.

Comprehensive statement as to the necessity of altering the present law in regard to master and workmen; decided opinion that common employment should not be a bar to prevent the workmen obtaining compensation for injuries, *Burnett* 422-436. 447-452. 457-467. 509-517——Desire for a restoration of the law to the state in which it was previous to the judicial decisions which set up the doctrine of common employment; opinion that this is more necessary than an actual change in the law itself, *ib.* 430-436.

Grounds for the opinion that it would generally be a great mistake on the part of the Legislature to remove the responsibility which at present rests on all classes of workmen in common employment, *G. F. Smith* 728-730. 773-775——Belief that it would be very unfair to throw upon the owners of mines the liability for accidents caused by negligence of men in common employment, *Pearce* 845——Argument that as the workmen are under common employment, they should take the liability for injuries, one with another, *Knowles* 900-906.

Statement that workmen have more control over their fellow-workmen than the master possesses, *Firth* 1016. 1064-1073——Expediency of all the men employed in a mine, with the exception of the manager, being considered to be in common employment, and thereby liable to each other for accidents caused by themselves, *ib.* 1053-1055.

Comparatively recent date of the first case having reference to common employment, *Lord Justice Bramwell* 1104-1112. 1129. 1186——Expediency of guarding against the general disinclination of servants to complain of each other, *ib.* 1116——Belief that the servant has a better opportunity of judging of the conduct of his fellow-servant than the master can have, *ib.* 1116. 1143-1152——Further evidence with reference to the question of liability of the master in cases of common employment; opinion that in the event of a fault on the master's part he should be liable, *ib.* 1187-1197.

Statement that a manager in a mine is, as a matter of course, a fellow-servant with the men under him, *Heath* 1518-1520——Supervision exercised over each other in every grade of workmen in witness' employment; *Robinson* 1733-1739——Disapproval of a certified manager in a mine being considered a fellow-workman; grounds for this opinion, *Brown* 1767. 1830. 1907.

Explanation of the law regarding common employment; contention that it is no part of a man's duty to supervise the acts of a fellow-workman, *Lord Justice Brett* 1926, 1968-1975. 1981-1988. 1994-1997——Examination as to the definition of "common employment," *ib.* 1968-1975. 1981-1997——Impossibility for a servant to recover from his master for injuries received, if he continues to work with fellow-servants whom he sees are negligent, *ib.* 1987.

Conclusion submitted by Mr. Meldon (in Draft Report intended to have been proposed to the Committee), that common employment should be defined by legislative enactment,

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ment, and could be, at all events, more clearly defined than it is by the existing common law, *App.* 132——Views of Mr. Meldon as to the mode of defining common employment in connection with the liability of employers, *ib.* 133.

Very wide construction given to the term "common employment" in ascertaining whether the person to whose act or default the injury is due is a fellow-servant, *Rep.* iii ——Conclusion of the Committee that the effect of abolishing the defence of common employment would effect a serious disturbance in the industrial arrangements of the country, *ib.* iv——Opinion, however, that the doctrine of common employment has been carried too far, when workmen employed by a contractor and workmen employed by a person or company who has employed such contractor are considered as being in the same common employment, *ib.* v.

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Contractors. Contention that the owner is responsible for injury in the case of a contractor employing his own men in a mine, *Pickard* 276–281.

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Contracts (Master and Men). Definition of the term "implied contract," *Lord Justice Bramwell* 1127, 1128——Possible evasion of the law, if altered, by the masters making contracts with their servants, *ib.* 1141, 1142.

Contention that in law there can be no implied contract, unless it was in the contemplation of both parties when it was made; examples of implied contracts, *Lord Justice Brett* 1919. 1926——Strong disapproval of allowing the master to contract himself out of liability for negligence to his servant; the condition of the master and servant as contracting parties is not equal, *ib.* 1935–1945. 2003–2005. 2008–2010——Limitation of the power to contract in the case of a seaman and his employer, *ib.* 1936–1938. 1945.

Disapproval of the master contracting himself out of liability to his workmen, *Gillespie* 2092–2094.

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Craven, Joseph. (Analysis of his Evidence.)—Large experience of witness as an employer of labour, and as a mechanical engineer at Leeds, 1751–1753——Examples of accidents which have occurred at the Victoria Foundry at Leeds; these accidents caused generally by the carelessness of the workpeople, 1753, 1754——Inquiry into two of the cases of accident by the factory inspector, who decided that there was no fault on the part of the master, 1753. 1755–1758——Absence of objection to making a master liable for the acts of a manager to whom he delegates his own duty, 1759–1762.

Crawford, William. (Analysis of his Evidence.)—Is secretary to the Durham miners, who are a body of 40,000 men, 1, 2——Statement read by witness explanatory of his views as to whether the right of miners to receive compensation for injuries should be extended or not, 3–6. 30–39. 43.

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Engineering Works. Numerous examples of cases of injury to workmen which should be compensated for by the employer, *Burnett* 422–429.

Engineers' Benefit Society. Constitution and working of the benefit society of the engineers, *Burnett* 422——Statement that an alteration in the present law would have no effect whatever on the subscriptions to the Engineers' Benefit Society; grounds for this opinion, *ib.* 468–472.

Evans, Frederick W. Strong dissent from certain evidence given last year by Mr. Evans on the part of railway servants, *Findlay* 1297. 1315–1317.

Exemption from Liability. Absence of liability on the part of a mineowner to compensate if ordinary care is exercised by a competent manager of a mine, *Crawford* 1–31. 33–38. 68, 69——Illustration of the distinction to be drawn between liability and non-liability on the part of the employer for injuries suffered by workmen, *Burnett* 429. 453–456.

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F.

Factory Inspectors. Expediency of giving factory inspectors power to bring actions on behalf of persons injured; belief that this would help to do away with speculative actions, *Brinton* 1613–1619. 1621–1629——Power under the Act of 1844, but omitted in the present Bill, for the factory inspector to initiate actions for injuries, *ib.* 1614, 1615. 1629——Certain cases in which it is proper that actions should be taken against masters, *ib.* 1617——

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1617——Belief that on the whole there is sufficient protection for workmen if the statutory penalties are enforced against the master by the factory inspector, *Brinton* 1617.

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Fife and Clackmannan Miners' Association. Information in regard to the financial position of the Fife and Clackmannan Miners' Association; the accumulated fund of the association amounts at present to about 14,500 *l.*, *Cook* 383–393.

Findlay, George. (Analysis of his Evidence.)—Is traffic manager of the London and North Western Railway; to a certain extent represents the opinion of the Railway Association, 1292–1296——Submits that if it is attempted to make managers of mines and foremen of works responsible, it will be impossible to stop short of making railway companies liable altogether for the act of every servant having authority over another, 1296, 1297. 1301–1304. 1307. 1318, 1319.

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Firth, William. (Analysis of his Evidence.)—Is chairman of the West Yorkshire Iron and Coal Company; has had twenty years' experience in coalmining, 995. 1013, 1014. 1018——Decided opinion that the law as regards the liability of masters for injury to their servants is the best that can be for the interests of trade and of the workmen themselves; grounds for this conclusion, 996–1004. 1019. 1025–1035.

General approval of the master being liable for the negligence of his manager; contention that the practical liability of masters would not be extended on account of the infrequent cases of negligence on the part of managers, 1005–1012. 1026–1035. 1041. 1056. 1082, 1083. 1087–1091——Impropriety of making the masters liable for the negligence of workmen among themselves, 1015–1017. 1040.

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Statement that accidents from the falls of roof and coal amount to about 40 per cent of the total accidents from coalmining, 1019——Great destruction of property very often consequent upon a negligent act of a workman, 1019–1024——Proposal that the fund at the disposal of the Miners' Union should be by law made answerable for culpable injury or damage committed by a member of the union; grounds for this proposal, 1019. 1031, 1032. 1050–1052. 1074–1080. 1084–1086. 1092–1097.

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Dissent from the opinion that the owner of a mine is alone benefited by the profits of the working, 1019——Argument that an alteration in the law will undoubtedly tend to want of care on the part of the men, *ib.*——Expediency of a general union of mine-owners (in the event of the law being altered) for the purpose of protecting their interests, 1019. 1091.

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Foreign Competition. Extract from letter from Mr. Krupp, illustrating the danger of overburdening an industry by strikes for higher wages or other difficulties, *G. E. Smith* 730——Prejudicial effect of foreign competition in the iron trade, *ib.*——Argument that increased liability in masters would have the effect of increasing the cost of production in England; difficulty which would arise in competing with foreign countries on account of the general absence of restrictions abroad, *Robinson* 1638.

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G.

Gillespie, John. (Analysis of his Evidence.)—Is secretary to the Association of Miners for Stirling and Linlithgowshire, 2089, 2090——Decided opinion that the law of master and servant should be assimilated to the general law of the country; expediency of making the master liable for accidents occurring through the negligence of any man having charge of others, 2091. 2095–2108——Grounds for the conclusion that a mine-owner should be made liable for accidents which occur through the negligence of any of his workmen, 2091——Disapproval of the master contracting himself out of liability to his workmen, 2092–2094.

Great Northern Railway Company. Contributions made by the directors of the Great Northern Company to the benefit funds of the men, *Oakley* 1377.

Great Western Railway Company. Doubtful continuance of the large contributions by the company (about 6,000 *l.* a year) to provident and superannuation funds in the event of increased liability being imposed on employers, *Grierson* 1358–1360. 1365, 1366.

Grierson, James. (Analysis of his Evidence.)—Is general manager of the Great Western Railway, 1352——General concurrence in the evidence given by Mr. Findlay, 1353——Impossibility of altering the law so that the line may be drawn at the chief manager as regards responsibility for accidents, 1353, 1355. 1361–1364——Opinion that the agitation which has arisen with regard to accidents to railway servants has been the result of misapprehension; assertion that all accidents, even the most insignificant, are recorded, and have been for many years, 1353, 1354.

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Heath, Robert. (*Member of the House*). (Analysis of his Evidence.)—Is a colliery proprietor and ironmaster in North Staffordshire; employs about 4,000 men, 1395–1399. 1417, 1418——General concurrence in the evidence of Lord Justice Bramwell, 1399–1402. 1446–1449——Opinion that where a proper and efficient manager is employed the responsibility of the employer should cease; belief that the present law is sufficient to protect the workman from any culpable neglect on the part of the manager, 1399. 1402. 1448, 1449. 1462. 1476–1483. 1493. 1520.

Statement that the amount of wages paid in ironworks is in relation to the risk encountered by the men; wages of 15 *s.* a day and upwards paid to workmen, 1402——Accidents in ironworks chiefly caused by the carelessness of the men themselves, 1402. 1438–1440. 1495, 1496——Decided importance of so legislating as to make workmen more careful; belief that this would tend more to lessen accidents than any care on the part of the manager, 1402–1416——Expediency of punishing a workman for culpable carelessness; contention that he should be made responsible for his own acts, 1402–1416. 1420–1423. 1433–1437. 1450–1453. 1490–1492. 1521–1523.

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Statement that it is to the undoubted interest of mineowners to employ competent managers; opinion that the best managers are the most economical, 1426–1429. 1530–1533——Disapproval of extending existing anomalies, and of making masters liable who have done no wrong at all, 1430–1432——Belief that it would tend to very materially diminish the workman's care if the master were made responsible for every accident, 1441, 1442. 1445.

Inexpediency of making the owner liable for injury caused by an unskilful workman when employed by the manager, 1448, 1449——Considerable danger in lessening in any way the responsibility of the men from what it is at present; decided opinion that such a course would cause accidents to be more frequent, 1456–1458. 1463, 1464——Salutary effect upon railway companies of the law of compensation; tendency of this law to create care in the management, 1468–1472.

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Contention that a master should not be responsible for his servant's misconduct if it has not been previously brought to his knowledge, 1502–1505. 1520——Exceptional instances of masters managing their own business in the coal trade, 1509——Liability of a master for the negligent but not for the wilful act of his servant, 1510–1512——Distinction in law between a wilful and a negligent act, 1513–1515.

Statement that a manager, as a matter of course, is a fellow-servant with the men under him, 1518–1520——Argument against increasing the liability of the master for the reason that it would tend to make the workmen more careless in regard to each other, 1521–1523.

Belief that managers and viewers of mines are sufficiently careful in regard to human life; improbability of recklessness on their part for the reason that they go into the pit first, 1532, 1533——Information as to the course adopted in examining a mine in reference to its safety; this examination made every morning previous to the workmen going down, 1534–1542——Penalties imposed by law upon any persons who examine the mine except the fire-tryers, 1542–1544.

Hewlett, Alfred. (Analysis of his Evidence.)—Is a coal and iron master at Wigan, and is director of the Wigan Coal and Iron Company, 799. 801——Submits conclusions in detail as to the inexpediency of making the present law of master and servant more stringent by increasing the responsibility of the employer, 800–802. 812–821.

Contention that it would be inflicting a great injustice upon owners of mines to make them liable for the acts of certificated managers, 801——Information relative to the "Lancashire and Cheshire Miners' Permanent Relief Society" for the benefit of the workmen, 801. 804–811.

Statement that within the last five years there have been eighteen instances of managers convicted for breaches of the Mines Regulations Act, 803——Belief that the Lancashire

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Benefit Society would be certainly impaired if the law were altered; grounds for this conclusion, 811——Visionary distinction between the master who manages and the master who does not manage a mine; opinion that there should be no difference as regards liability, 814-821.

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Statement of the opinion of the London branch of the Iron Trades Employers' Association in relation to the law of liability; decided feeling that it should not go further than it does at present, *S. Smith* 1548-1570. 1580-1585.

J.

Juries. Approval of submitting questions of liability to juries; inclination, however, of juries to give excessive damages in cases of injury, *Lord Justice Brett* 1919. 1971-1975. 2016, 2017——Decided opinion that the largest possible power should remain with juries, *ib.* 1971-1975——Suggestion that if a new system of law be applied in actions for damages for injuries, the juries should be instructed not to give a sum once for all as damages, but that it should be given to the men from time to time, *ib.* 2016.

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Knight, Robert. (Analysis of his Evidence.)—Is general secretary of the Boiler-makers and Iron Ship-builders' Association, 2073——Concurs in the view expressed by Lord Justice Brett, that a master should be liable for injuries suffered by a servant through negligence just as much as he is for injuries to a stranger, 2074-2081. 2087, 2088——Numerous classes of accidents which occur to workmen for which a master should not be held liable; instances of such accidents, 2074-2077——Liability of the master when superintending the work himself, but not when it is superintended by a foreman, 2077, 2078. 2082-2086.

Knowles, John. (Analysis of his Evidence.)—Is one of the managing directors of Messrs. Knowles & Sons (Limited), colliery proprietors in Lancashire; explains his duties as managing director, 898, 899. 967-978——Conclusion that the present law respecting the liability of masters and servants is quite sufficient for all purposes, and that the provisions of the Mines Regulations Act are adequate for the safety of the men, 900-914. 950-958.

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Employment of assistants by the workmen in Lancashire; these assistants subject to the special rules of the colliery, and to the Act of Parliament as regards their conduct, *Hewlett* 822–834——Statement that in Lancashire the names of all persons employed in collieries are not entered in a book, *ib.* 825. 832–834.

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Exhaustive statement explanatory of the present law; erroneous impression generally entertained that there is a natural right for the maintenance of actions against masters in respect of negligence of their servants, *Lord Justice Bramwell* 1100–1116. 1131–1142. 1153–1157. 1166. 1167. 1170–1172. 1176–1182——Liability of a master for his servant's negligence under two different sets of circumstances; illustrations of these cases, *ib.* 1100——Expediency of making the law, if altered, applicable to all persons, whether in private society or in business, *ib.* 1168, 1169——Doubt whether the law at present goes sufficiently far for the protection of masters; illustration of its hardship on masters, *ib.* 1198–1200.

Theoretical rather than practical hardship of the present law regarding small proprietors, *Briggs* 1261——Grounds for the opinion that any alteration in the law increasing the responsibility of owners will be prejudicial to the public interests and also to the workmen, *ib.* 1261–1272.

General concurrence of witness in the evidence of Lord Justice Bramwell, *Heath* 1399–1402. 1446–1449——Disapproval of extending existing anomalies, and of making masters liable who have done no wrong at all, *ib.* 1430–1432——Statements that a modification in the existing law might be made with advantage to both master and servant; opinion that an owner should not be liable for injury except it has been occasioned through his own personal culpable default, *Robinson* 1638. 1672–1680.

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Information respecting the origin of the law; recital of cases illustrative of the various kinds of liability, *Lord Justice Brett* 1916–1928. 1953, 1954. 2002. 2004——Concurrence in Lord Justice Bramwell's opinion that the liability of a master for his servant's acts is not a law of nature, *ib.* 1919.

Grounds for the conclusion that the principle *Qui facit per alium, facit per se*, is the doctrine governing the liability of the master; concurrence in Lord Justice Bramwell's opinion that this principle is not altogether a just one, *Lord Justice Brett* 1920, 1921. 1926. 1949–1951. 1978, 1979——The doctrine is that a master is liable for the act of his servant, not of his agent, *ib.* 1954.

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Non-liability at present of a master to any servant for any injury which arises from the act or default of any fellow-servant, *Rep.* iii——Liability of masters in respect of injuries caused by servants in the course of their employment to persons not in the same employment; that is, even though the acts causing the injuries may not have been ordered or authorised, or may even have been forbidden, *ib.*

Strong concurrence of authority against the justice of the foregoing law, *Rep.* iii——Explanation as to the probable origin of the law, *ib.* iii, iv——Conclusion of the Committee

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mittee that the true principle of law is that no man is responsible except for his own acts and defaults, *Rep.* iv.

Conflicting decisions of the Scotch Courts and the English Courts; result of an appeal to the House of Lords in 1856 that the law was declared to be identical for England and Scotland, *Rep.* iv.

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Legal Proceedings. Expediency of establishing cheap tribunals by which the present enormous costs would be to some extent avoided, *S. Smith* 1581–1584.

Doubtful expedience of making it compulsory for a workman, when suing the master for an injury, to include in the action the actual perpetrator of the injury, *Lord Justice Brett* 2011–2015.

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Limitation of Liability. Expediency, in the event of increased responsibility in masters, of limiting the liability as to amount, *S. Smith* 1580, 1581. 1609–1611.

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Workmen's Liability. Approval of making the individual who causes an accident liable to a certain degree, but not as regards compensation for injury, *Pickard* 290-296——Examination as to the liability of the man who causes an injury in a mine; necessity for making the master liable on account of his ability to pay compensation, *Cook* 348-355. 394-398——Expediency of making it imperative that a certain amount of responsibility should rest on the workman as well as upon the manager, *ib.* 682.

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